No. 54.

TRANSCRIPT OF RECORD.

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

THE BRUSH ELECTRIC COMPANY,

Appellant,

vs.

CALIFORNIA ELECTRIC LIGHT COMPANY, SAN JOSE LIGHT AND POWER COMPANY, AND THE ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE,

Appellees.

APPEAL

FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA, FROM ORDER DENYING MOTION OF THE BRUSH ELECTRIC COMPANY TO BE DISMISSED FROM SUIT.

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INDEX.

JAMES H. BARRY, PRINTER, 429 MONTGOMERY ST., S. F.

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BILL OF COMPLAINT.

IN THE CIRCUIT COURT OF THE UNITED STATES, IN AND FOR THE NINTH CIRCUIT AND NORTHERN DISTRICT OF CALIFORNIA.

THE BRUSH ELECTRIC COMPANY,
CALIFORNIA ELECTRIC LIGHT COMPANY, and the
SAN JOSE LIGHT AND POWER COMPANY,
Complainants,

vs.

THE ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE,
Defendant.

In Equity.

To the Honorable the Judges of the United States Circuit Court, Northern District of California:

The Brush Electric Company, a corporation duly organized and existing under the laws of the State of Ohio, and located and having its principal place of business in the City of Cleveland, State of Ohio; the California Electric Light Company, a corporation duly organized and existing under the laws of the State of California, and located and having its principal place of business in the City and County of San Francisco, State of California, and the San Jose Light and Power Company, a corporation duly organized and existing under the laws of the State of California, located and having its principal place of business in the City of San Jose, County of Santa Clara, State of California, brings this, their Bill of Complaint, against the Electric Improvement Company of San Jose, a corporation duly organized under the laws of the State of California, and located and having its principal place of business in the City of San Jose, County of Santa Clara, State of California.

I. And your orators complaining show unto your

2 Honors that heretofore, and before the 15th day of May, A. D. 1879, Charles F. Brush was the true, original and first inventor of a certain new and useful improvement in Electric Arc Lamps, not known or used by others prior to his invention thereof, and not in public use or on sale more than two years prior to his application for letters patent therefor.

II. And your orators further show unto your Honors that the said Charles F. Brush, being, as aforesaid, the first and original inventor of said improvement, and being a citizen of the United States, made application on the fifteenth (15th) day of May, A. D. 1879, to the Commissioner of Patents of the United States of America, for letters patent therefor, in accordance with the then existing acts of Congress, and having in all respects duly com-

plied with the conditions and requisitions of said acts, on the second (2d) day of September, A. D. 1879, letters patent of the United States of America, numbered 219,208, signed by the Secretary of the Interior, countersigned by the Commissioner of Patents, and sealed with the seal of the Patent Office, all in due form of law, for the said invention, were granted and issued to the said Charles F. Brush, whereby there was secured to the said Charles F. Brush, his heirs and assigns, for the term of seventeen years from and after the second day of September, A. D. 1879, the full and exclusive right of making, using and vending the said invention throughout the United States and Territories thereof, which letters patent, or a copy thereof, is hereunto attached, marked Exhibit "A," and made a part of this Bill of Complaint.

III. And your orators further show unto your Honors that afterward—to wit, on or about the 1st day of September, 1880—the said Charles F. Brush granted to your orator, The Brush Electric Company, subject to the payment of certain royalties, the exclusive license to make, use and sell the said inventions and improvements described and claimed in said letters patent No. 219,208 throughout the United States and Territories thereof for the term of seventeen years from April 24, 1877, which said exclusive license was duly recorded in the Patent Office of the United States, as by said exclusive license, or a duly certified copy thereof, here in Court ready to be produced, will more fully and at large appear.

IV. And your orators further show unto your Honors that afterward—to wit, on or about the eighth (8th) day of January, A. D. 1877—the said Charles F. Brush, by an assignment in writing of that date, sold, assigned and transferred unto your orator, The Brush Electric Company, the entire and undivided right, title and interest, both legal and equitable, in and to said invention and improvements in Electric Arc Lamps, and the said United States letters patent therefor, together with all contracts relating thereto, and all claims for profits or damages which he then had against any third party or parties arising or growing out of infringement of said patent, which assignment was duly recorded in the Patent Office of the United States, as by said assignment, or a duly certified copy thereof, here in Court ready to be produced, will more fully and at large appear.

V. And your orators further show unto your Honors that prior to the making and filing of this Bill of Complaint your orator, The Brush Electric Company, granted to your orator, the California Electric Light Company, an exclusive license to use, rent and sell, and vend to others for use and sale, the said inventions and improvements described and claimed in said letters patent No. 219,208, throughout the States of California, Oregon,

Washington and Nevada, for the full term of said letters patent, as by said exclusive license, or a duly certified copy thereof, here in Court ready to be produced, will more fully and at large appear.

3 V½. And your orators further show unto your Honors that prior to the making and filing of this Bill of Complaint—to wit, on or about the 27th day of March, 1882—your orator, the California Electric Light Company, granted to the San Jose Brush Electric Light Company, a corporation duly organized and existing under the laws of the State of California, an exclusive license to use, rent and sell, and to vend to others for use and sale, the said inventions and improvements described and claimed in said letters patent No. 219,208, within the City of San Jose and the Town of Santa Clara, in the State of California, and the territory embraced between the city limits of both of said places; and that afterward—to wit, on June 29th, 1889—said San Jose Brush Electric Light Company granted to your orator, the San Jose Light and Power Company, a corporation aforesaid, all the rights, privileges and licenses to use, rent and sell, and to vend to others for use and sale, the said inventions and improvements described and claimed in said letters patent No. 219,208, for the City of San Jose and the Town of Santa Clara, State of California, and the territory embraced within the city limits of both of said places, and all extensions, present or future, of and to either place, the same being all the rights and privileges theretofore granted by the California Electric Light Company to the said San Jose Brush Electric Light Company, as by said original license granted by said California Electric Light Company, or duly certified copy thereof, here in Court ready to be produced, will more fully and at large appear.

And it will also further appear by an original assignment and license granted by said San Jose Electric Light Company to the San Jose Light and Power Company, which assignment

4 and license was duly authorized by the California Electric Light Company, a duly certified copy thereof, here in Court ready to be produced, will more fully and at large appear.

VI. And your orators further say that, by virtue of the premises, your orator, The Brush Electric Company, became and now is the sole and exclusive owner of said letters patent 219,208, and of the inventions and improvements described and claimed therein, and of all the rights and privileges granted and secured, or intended to be granted and secured, thereby; and further say that your orator, the California Electric Light Company, became and now is the exclusive licensee to use, rent and sell, and to vend to others for use and sale, the said inventions and improvements described and claimed in said letter patent No. 219,208, throughout the States of California, Washington, Oregon and Nevada, for the full term of said letters patent.

And further say that your orator, the San Jose Light and Power Company, became and now is the exclusive licensee to use, rent and sell, and to vend to others for use and sale, the said inventions and improvements described and claimed in said letters patent No. 219,208, within the City of San Jose and the Town of Santa Clara, State of California, and the territory embraced between the city limits of both places, and all extensions, present or future, and to either place, for the full term of said letters patent; and that your orator, the San Jose Light and Power Company, has invested and expended large sums of money in introducing into commercial use the said inventions and improvements within the said City of San Jose and Town of Santa Clara, State of California, and the territory embraced between the city limits of both of said places, and all extensions, present or future, and to either place.

5 And that your orator, the San Jose Light and Power Company, has introduced into public use within the said City of San Jose, and the Town of Santa Clara, in Santa Clara County, State of California, a large number of arc electric lamps, embodying the said patented improvement, and has created a large, profitable and increasing public demand for the same; and that your orator, the Brush Electric Company, has invested and expended large sums of money in the manufacture and sale of electric arc lamps, embodying said inventions, and that said patented improvements have been introduced largely into public use by your orator, The Brush Electric Company, and that your orator, The Brush Electric Company, has created a large, profitable and increasing public demand for the same; and that your orator, The Brush Electric Company, has provided facilities for promptly filling orders for electric arc lamps, embodying said invention; and that your orator, The Brush Electric Company, and your orator, the California Electric Light Company, do not grant and have not granted licenses to others to manufacture, to sell or to use the said patented inventions and improvements in electric arc lamps within the City of San Jose and the Town of Santa Clara, and the territory embraced between the city limits of both of said places, and all extensions, present or future, of and to either place, other than the exclusive license given and granted, as aforesaid, to your orator, the San Jose Light and Power Company.

6 VII. And your orators further show unto your Honors that on or about April, 1887, your orator, The Brush Electric Company, filed a bill in equity in the Circuit Court of the United States for the District of Indiana against the Fort Wayne Electric Light Company, Henry G. Olds, Perry A. Randall and Ranald T. McDonald, of Fort Wayne, Indiana, for the infringement of said letters patent No. 219,208, by making and selling

electric arc lamps embodying the inventions and improvements described and claimed in said letters patent: that the defendants appeared by counsel and filed an answer and several amendments thereto, alleging, among other things, that the said letters patent 219,208 were void because the said Charles F. Brush did not file in the Patent Office a written description of the improvement covered by the said patent, and of the manner and process of making it, in such full, clear, concise and exact terms as to enable any one skilled in the art to make, construct and use the same; and did not explain the principle of his said invention, and the best modes in which he contemplated applying that principle so as to distinguish it from other inventions, and did not point out and particularly claim the part, improvement or combination which he claimed as his invention; that the alleged invention described and claimed in said letters patent was not, in view of the prior art, a patentable invention, and as showing the prior art referred to the following patents, concerning all of which testimony was taken: English patent to Roberts, No. 14,198, dated July 6, 1852, English patent to Slater and Watson, No. 212, dated October, 1852; English patent to Denayrouse, No. 3,170, dated August 21, 1877; English patent to Fontaine Moreau, No. 1,806, dated 1853; English patent No. 441, of 1875, to Kosloff: English patent No. 970, granted to Jensen, and French patent No. 107,307, granted to Kotinsky in 1875: that the said Charles F. Brush was not the true, original and first inventor of the apparatus covered by said patent 219,208; that the first, second, third and fourth claims of said patent were void as claiming a result; that the fifth and sixth claims were void as covering inoperative combinations of parts, and that said letters patent 219,208 were void because the invention therein described and claimed was anticipated by United States letters patent No. 147,827, granted to Mathias Day, Jr., February 24, 1874; that testimony was taken on behalf of the parties, and the case came on to a final hearing on pleadings and proofs in October, 1889, before Hon. Walter Q. Gresham, Judge of said Court, and was fully argued by counsel for both parties, and after full consideration the Court found that said letters patent No. 219,208 were good and valid, and that the defendants had infringed the first, second, third, fourth, fifth and sixth claims of the same, and granted a perpetual injunction against the defendants, and directed an accounting of profits and damages to be taken, as by a copy of the opinion of the Court hereto annexed and marked Exhibit A, and of the decree in said case hereto annexed and marked Exhibit B, will more fully and at large appear.

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VIII. And your orators further show unto your Honors that on or about February 17, 1890, your orator filed a bill in equity

in the Circuit Court of the United States for the Northern District of Illinois against the Belvidere Electric Lighting Company, of Belvidere, Illinois, and the Sperry Electric Company, of Chicago, Illinois, for the infringement of said letters patent No. 219,208, by the manufacture, use and sale of double-carbon electric lamps, designated in the cause as the Old Sperry Double-Carbon Lamp, and in which the two pairs of carbons were independently adjusted and controlled, and caused to be burned successively, the arc being automatically established and maintained between one pair until it had been consumed, when the second pair, which had been maintained in a separated relation during the consumption of the first pair, was automatically brought into contact and then separated, and the arc established and maintained between its carbons until they had been consumed; that on or about February 17, 1890, your orator filed a motion and affidavits in support thereof for a preliminary injunction to restrain said defendants, or either of them, pending the final hearing, from making, using or selling double-carbon arc lamps like, or substantially like, said Old Sperry Double-Carbon Lamps; that on or about April 2, 1890, said motion was heard before Hon. Walter Q. Gresham, Judge of said Court, the parties being represented, the complainant by H. A. Seymour and C. K. Offield, and the defendant by F. W. Parker and J. L. Thompson; and after a comparison of said Old Sperry Double-Carbon Lamp with complainant's patent No. 219,208, the Court found that said lamp was the substantial equivalent of the invention disclosed and claimed in complainant's patent, and granted the preliminary injunction, as prayed for, against the defendant company, the Belvidere Electric Lighting Company, as by a copy of the order and decree of the Court, hereto annexed and marked Exhibit C, will more fully and at large appear.

IX. And your orator further shows unto your Honors that on or about February 3, 1890, your orator filed a bill in equity in the Circuit Court of the United States for the Northern District of Illinois against the Sperry Electric Company of Chicago, Illinois, for the infringement of letters patent No. 219,208, by the manufacture, use and sale of double-carbon arc lamps; that on or about February 18, 1890, your orator filed a motion and affidavits supporting the same for a preliminary injunction to restrain said defendant, pending the final hearing, from making, using or selling double-carbon arc lamps like, or substantially like, a lamp designated in said cause as the "New Sperry Double-Carbon Lamp," wherein two pairs of carbons are independently actuated and adjusted, and burned successively, the feeding carbon of one pair having a supplemental clamp or device to enable it to be manually latched up and retained separated from its
8 mate during the burning of the other pair, the latched-up carbon being then automatically released, and the arc

established and maintained between the second pair of carbons until consumed ; the said lamp being so constructed that in the event the feeding carbon of one pair should not be manually latched up before the lamp was put into operation, the regulator would automatically separate both pairs of carbons and allow the supplemental clamp to latch up the feeding carbon of one pair until the other pair had been consumed. The defendant, in its answering affidavits, also admitted the manufacture and sale of double-carbon lamps of the construction shown in defendant's drawings numbered 7 and 8 in said cause, and wherein the two pairs of carbons are independently actuated and controlled, and burned successively, and in which the feeding carbon of one pair is required to be manually latched up to insure the starting of the lamp and the successive burning of its two pairs of carbons ; that defendant averred in its affidavits that neither of its lamps referred to herein infringed or conflicted with the invention disclosed and claimed in complainant's patent, No. 219,208, but that both of said lamps were substantially different in their construction and mode of operation from the lamp shown and described in said patent ; that with respect to the New Sperry Double-Carbon Lamp, said defendant averred that it was not constructed or designed to separate both sets of carbons when the lamp was first put into operation, a supplemental clamp being provided, by which one feeding carbon was to be latched up prior to the starting of the lamp, and that in the event the lamp trimmer should fail to latch up one of the feeding carbons, the lamp regulator would automatically separate both pairs of carbons and establish the arc between one pair only, but that such initial separation of the carbons is a simultaneous separation, and designedly so, to insure an arc of equal length between each pair, and hence said lamp did not infringe any of the claims of said complainant's patent 219,208 ; and that with respect to the lamps of defendant's drawings Nos. 7 and 8, defendant contended that they did not infringe the invention or the claims of said patent, because said lamp was so constructed that it could not separate its two pairs of carbons dissimultaneously or successively when first put into operation, because one of the carbons must be manually latched up to insure the establishment of the arc between the carbons of the other pair, and hence said lamp did not infringe any of the claims of said patent ; that said defendant, in opposing the motion for a preliminary injunction, filed the affidavits of Prof. Henry S. Carhart, of the University of Michigan, Ann Arbor, Mich. ; George A. Bassett ; Prof. Albert P. Carman, of Perdue University, Lafayette, Ind.; Francis B. Bedt, electrical engineer, of Chicago, Ill. ; Samuel L. Sperry, President of the Sperry Electrical Company of Chicago, Ill. ; Gustav A. Harter, of Chicago, Ill. ; Charles A. Pfluger, electrical engineer, of Chi-

cago, Ill. ; Prof. Louis Bell, of Chicago, Ill. ; W. H. Mareau, of Chicago, Ill. ; Bernard Mayer, electrical engineer, of Chicago, Ill. ; Prof. Elisha Gray, of Chicago, Ill. ; Elmer S. Schemerhorn, electrical engineer, Chicago, Ill. ; Frank J. Sprague, electrical engineer and vice-president of the Sprague Electrical and Motor Company of New York ; William J. Jenks, electrical expert with the Edison Light Company of New York ; and Elmer E. Sperry, of Chicago, Ill.—said affiants averring that the said defendant's lamps were substantially different in construction and mode of operation from the lamp disclosed and claimed in said patent No. 219,208, and did not embody the invention claimed therein ; that the said defendant, in its affidavits, alleged that the invention described and claimed in said letters patent No. 219,208 was not, in view of the prior art, a patentable invention, or that, in view of the prior art, the claims of said patent must be restricted to a lamp of the construction, and involving the particular and precise operation, of the lamp set forth in said patent 219,208 ; and as anticipating patents, and as showing the prior art, referred to the following patents in its affidavits, to wit : English patents No. 380, of 1879 ; No. 4,432, of 1877 ; No. 740, of 1879 ; No. 1,806, of 1853 ; No. 14,198, of 1852 ; No. 312, of 1852 ;
9 No. 1,446, of 1874 ; No. 3,170, of 1877 ; No. 830, of 1879 ; No. 970, of 1875 ; No. 1,261, of 1874 ; No. 4,476, of 1878, and also the following United States letters patent : No. 147,827, granted to Mathias Day, Jr., February 24, 1874 ; No. 318,375, granted to Fuller, August 12, 1879 ; No. 212,183, granted to C. F. Brush, February 11, 1879 ; No. 198,436, granted to Wallace, December 18, 1877 ; No. 218,958, granted to Gantt, August 26, 1879 ; re-issue No. 8,718, granted to C. F. Brush, May 20, 1879 ; that the motion came on for hearing on or about April 2, 1890, before Hon. Walter Q. Gresham, Judge of said Court, and was fully argued by counsel for both parties, and after full consideration the Court found that defendant's lamps were substantially equivalent of the lamp of complainant's patent, and on the 8th of April, 1890, granted the motion for a preliminary injunction, as prayed for, as by a copy of the order of the Court hereto annexed, and marked Exhibit D, will more fully and at large appear ; that thereafter, and on or about April 20, 1890, and on the application of the said defendant, the Court ordered a re-argument of the motion, which was again fully argued by counsel for both parties before Judge Gresham, and also Judge Blodgett, who was requested by Judge Gresham to sit with him in hearing the re-argument of the motion ; that on or about June 12, 1890, Judges Gresham and Blodgett affirmed the former decision and granted the preliminary injunction, as prayed, as by a copy of the order and decree hereto annexed, and marked Exhibit E, will more fully and at large appear.

X. And your orators further show unto your Honors that on or about March 15, 1890, your orator, The Brush Electric Company filed a bill in equity in the Circuit Court of the United States for the District of Indiana against the Nordyke and Marmon Company *et al.*, for the infringement of said letters patent No. 219,208, by the use of double-carbon electric lamps, designated in the cause as the "Indianapolis Jenny Double-Carbon Lamps," and in which two pairs of carbons are independently adjusted and controlled and burned successively, one pair of carbons being consumed prior to the establishment of the arc and burning of the other pair; that on or about April 22, 1890, your orator, The Brush Electric Company, filed a motion for a preliminary injunction, and affidavits in support of the same, to restrain said defendants, or either of them, pending the final hearing, from making, using, or selling double-carbon lamps, like or substantially like said Indianapolis Jenny Double-Carbon Lamps; that on or about June 10, 1890, the motion was heard before Hon. Walter Q. Gresham, Judge of said Court, and was fully argued by counsel for both parties, and after a comparison of said Indianapolis Jenny Double-Carbon Lamp, with complainant's patent, No. 219,208, and a full consideration of the case, the court found that said lamp was the substantial equivalent of the invention described and claimed in complainant's patent, and on the 12th day of June, 1890, granted the preliminary injunction, as prayed for, as by a copy of the order and decree of the Court hereto annexed, and marked Exhibit F, will more fully and at large appear.

XI. And your orators further show unto your Honors that on or about February 18, 1890, your orator, The Brush Electric Company, filed a bill in equity in the Circuit Court of the United States for the district of Indianapolis against the Indianapolis Union Railway Company for the infringement of said letters patent, No. 219,208, by the use of double-carbon electric lamps, designated in the cause as the "Indianapolis Jenny Double-Carbon Lamps," and in which two pairs of carbons are independently adjusted and controlled and burned successively, one pair of carbons being consumed or practically consumed prior to the establishment of the arc and burning of the other pair; that on or about May 13, 1890, your orator, The Brush Electric Company, filed a motion and affidavits in support thereof for a preliminary injunction to restrain said defendant from the use of double-carbon lamps, like or substantially like said Indianapolis Jenny Double-Carbon Lamps; that on or about June 10, 1890, the motion was heard before Hon. Walter Q. Gresham, Judge of said Court, and was fully argued by counsel for both parties, and after a comparison of said Indianapolis Jenny Double-Carbon Lamp with complain-

ant's patent, No. 219,208, and a full consideration of the case, the court found that the said lamp was the substantial equivalent of the invention described and claimed in complainant's patent, and on the 12th of June, 1890, granted the preliminary injunction, as prayed for, as by a copy of the order and decree of the court hereto annexed, and marked Exhibit G, will more fully and at large appear.

11 XII. And your orators further show unto your Honors, that on or about the — day of —, 1889, your orator, The Brush Electric Company, filed a bill in equity in the Circuit Court of the United States, for the Northern District of Ohio, against the Western Electric Light and Power Company *et al.*, for the infringement of said letters patent, No. 219,208, by making, using and selling electric arc lamps, embodying the inventions and improvements described and claimed in said letters patent, No. 219,208, to wit, double carbon lamps in which two pairs of carbons were independently adjusted and controlled, and caused to be burned successively, the arc being automatically established and maintained between one pair until it had been consumed, when the second pair, which had been maintained in a separated relation during the consumption of the first pair, were automatically brought into contact and then separated, and the arc established and maintained between its carbons until they had been consumed.

That the defendant appeared by counsel, filed an answer alleging, among other things, that said letters patent, No. 219,208, were void, because the said Charles F. Brush did not file in the Patent Office a written description of the improvement covered by said patent, and of the manner and process of making it, in such full, clear, concise and exact terms as to enable any one skilled in the art to make, construct and use the same.

That he did not explain the principle of his said invention, and of any methods in which he contemplated applying that principle, so as to distinguish it from other inventions.

That he did not point out and particularly claim the improvement and combination which he claimed as his invention.

12 That the alleged invention described and claimed in said letters patent was not in the view of a prior art a patentable invention; that the said Charles F. Brush was not the true, original and first inventor of the apparatus covered by said patent, No. 219,208; that the first, second and third claim of said patent were void as claiming a result.

That the said letters patent, No. 219,208, were void, because the invention therein described and claimed was anticipated by United States letters patent Nos. 147,827 and 156,015, granted to Matthias Day Jr., February 24, 1874, and the French patent to Denayrouse of 1877, No. 3170.

Due proofs were taken on the trial of the said action, and after fully considering the matter, the court found that the said lamp used by the defendant was the substantial equivalent of the invention disclosed and claimed in complainant's patent, and a decree was duly entered for an injunction, and the usual reference to a Master to assess and report damage against the said Western Electric Light and Power Company *et al.*, as by a copy of the findings and decree of the court hereto annexed and marked "Exhibit H" will more fully and at large appear.

XIII. And your orators further show unto your Honors that on or about the first day of July, 1890, your orator, The Brush Electric Company, filed a bill in equity in the Circuit Court of the United States for the District of Indiana against the Fort Wayne Electric Company *et al.*, the number of said action being 8609, for the infringement of said letters patent No. 219,208, by the manufacture, use and sale of a double carbon electric lamp, designated in the cause as the "Wood Lamp," and in which two pairs of carbons were independently adjusted and controlled, and caused to be burned successively, the arc being auto-
13 matically established and maintained between one pair of carbons until they had been consumed, when the second pair, which had been maintained in a separated relation during the consumption of the first pair, was automatically brought into contact, and then separated, and the arc established and maintained between its carbons until they had been consumed.

That the said "Wood Lamp" referred to in this action is the identical lamp used by the defendant herein.

That after filing the bill in the said action, of The Brush Electric Company against the Fort Wayne Electric Company, the said complainant moved for an injunction *pendente lite*, which motion was heard and considered in the month of October, 1890.

That the motion for injunction in said cause was to restrain the said defendants, or either of them, pending the final hearing, from making, using or selling double carbon electric lamps like, or substantially like, the said "Wood Lamp" referred to.

That the said motion was heard before the Hon. Blodgett and the Hon. Walter Q. Gresham, Judges of the said Court, the parties being duly represented; and, after a comparison of said "Wood Lamp," with complainant's patent, No. 219,208, the Court found that said "Wood Lamp" was the substantial equivalent of the in vention disclosed and claimed in complainant's patent, and granted the preliminary injunctions prayed for against the said defendants, the Fort Wayne Electric Company *et al.*, as by a copy of the order and decree of Court hereunto annexed and marked "Exhibit I" will more fully and at large appear.

14 Your orators further complain and say that the defendant, well knowing the premises and the rights secured to

your orators as aforesaid, has since the date of said patent, since September 2, 1879, at the City of San Jose and County of Santa Clara, State of California, within said district, and before the commencement of this suit, infringed upon your orators' rights under said patent by using and leasing to others for use, and selling without your orators' leave or license, large numbers of electric arc lamps embodying the inventions described and claimed in said patent, whereby said defendant has realized large profits, which in equity belong to your orators, and have caused your orators great and irreparable loss and injury in the said business.

And your orators further show unto your Honors that the electric arc lamps used and leased to others for use, and sold, as aforesaid, by the defendant hereon, are substantially the same in their construction and mode of operation as those which were made and sold by the defendants in the said suits in the District of Indiana and Southern District of Illinois, and in the District of Ohio, heretofore mentioned in this bill.

And your orators further show unto your Honors that said defendant has put into use and leased to others for use, and sold, large numbers of said electric arc lamps, and are now engaged in using, leasing and selling large numbers of said electric arc lamps, which it proposes to use and vend, or lease to others for use, and has made and realized large profits and advantages therefrom, but to what extent and how much exactly your orators do not know, and pray discovery thereof; and your orators say that the use and sale, and leasing to others for use, of the said invention by said defendant, and its other aforesaid unlawful acts in this regard, in defiance of the rights of your orators, has the effect to aid, encourage and induce others to venture to infringe said letters patent, in disregard of your orators' rights.

And your orators further show unto your Honors that notice has been given to said defendant of said infringement of the rights of your orators in the premises, and have requested it to desist and refrain therefrom, but it has disregarded said notice and refuses to desist from said infringement, and still continues to use and lease to others for use, and sell, the electric arc lamps, as aforesaid, in disregard of your orators' rights.

And forasmuch as your orators can have no adequate relief except in this Court, and to the end, therefore, that the said defendant may, if it can, show cause why your orators cannot have relief herein prayed, and may, but not upon oath, an oath to defendant's answer being hereby waived, according to its best and utmost knowledge, remembrance, information and belief, full, true, direct and perfect answer make to all and singular the premises, and that said defendant may be compelled to account

for and pay to your orators the income and profits thus unlawfully derived, or which might have been derived, from the violation of the rights of your orators, as above, as well as the damages your orators have sustained thereby, together with the costs of this suit.

May it please your Honors to grant unto your orators the writ of injunction of this Court, provisionally enjoining and restraining said defendants, their clerks, employees, agents and attorneys, and each and every of them, from making, using or selling any electric arc lamps embodying said patented improvements during the pendency of this suit. And also the writ of injunction of this Court perpetually enjoining and restraining said defendants, and its clerks, employees, agents and attorneys, each and every of them, from making, using or selling any electric arc lamps embodying said patented improvement, or any or either of said improvements; and that your orators may have such other or further relief as the nature of the case may require, and to your Honors may seem meet.

May it please your Honors to grant unto your orators not only the writ of injunction conformable to the prayer of this bill, but also a writ of subpœna, directed to said defendant, the Electric Improvement Company of San Jose, commanding it at a certain time, and under a certain penalty therein to be limited, personally to be and appear before your Honors in this Court,
16 then and there to answer to this Bill of Complaint, and to stand to, perform and abide by such further order, direction and decree as to your Honors may seem meet in the premises.

M. M. ESTEE,
RAMON E. WILSON,
Solicitors for Complainants.

E. J. McCUTCHEN, *of Counsel.*

UNITED STATES OF AMERICA,
Northern District of California, } ss.

On this 17th day of January, 1891, before me, Geo. T. Knox, personally appeared Geo. H. Roe, the Secretary of the California Electric Light Company, one of the complainants, who, being by me duly sworn, deposes and says:

That he did read the foregoing Bill of Complaint subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to such matters he believes it to be true; and that he verily believes the said Charles F. Brush to be the true, original and first inventor of the improvements severally described and claimed in said recited patent No. 219,-

208, and that the title of complainants into and under said patent is as set forth in said bill.

GEO. H. ROE.

Subscribed and sworn to before me this 17th day of January, 1891, at San Francisco, State of California.

GEO. T. KNOX,
[NOTARY SEAL.] *Notary Public.*

The undersigned, the California Electric Light Company, by its Secretary, undertakes to pay the costs chargeable in the above case, provided the same are assessed to the complainants.

CALIFORNIA ELECTRIC LIGHT COMPANY,
By GEO. H. ROE, *Secretary.*

17 EXHIBIT A.

In the Circuit Court of the United States for the District of Indiana.

THE BRUSH ELECTRIC COMPANY
vs.
THE FORT WAYNE ELECTRIC LIGHT COMPANY, *et al.*
} No. 8,250. Chancery.

GRESHAM, J.

This suit is brought for an alleged infringement of letters patent No. 219,208, granted to Charles F. Brush, September 2, 1879, for improvement in Double-Carbon Electric Lamps of the arc type. Brush assigned the patent to complainant before suit was brought.

When two ordinary, pointed carbon sticks are in contact in an electric circuit the circuit is closed, and the current freely passes through the carbons without the production of any appreciable amount of heat or light at the point of contact. If, however, while the electric current is passing through them, the carbons are slightly separated, the current will continue to flow in crossing or leaping the small space between the separated carbon-points, and intense heat and light will be produced. This is known as the Electric Arc Lamp, and the one generally used for illuminating large buildings and halls, and for lighting streets. The incandescent electric light is produced by causing a current of electricity to pass through a filament in a glass bulb, from which the air has been exhausted. In its passage the current encounters great resistance, and, as a consequence, the filament is heated to a degree producing a bright, white light throughout its entire length. This light is well adapted to use indoors.

As early as 1810 Sir Humphrey Davy, with a battery of 2,000 cells, succeeded in producing an arc light between two horizontal charcoal pencils, insulated, except a small portion, at their ends, but owing to the rapid combustion of the soft charcoal points, and the great cost of the battery, and the short duration of the light, it was of no practical or commercial value. But little progress was made in the improvement of this arc light or lamp until 1844, when Foucalt substituted pencils made of hard gas carbon for the charcoal pencils of Davy, and thereby for the first time produced a persistent, but short-lived, electric arc light. By a clock-work mechanism Foucalt fed the carbon pencils toward each other so as to imperfectly regulate their burning away and maintain the arc. The voltaic battery did not generate electricity on a sufficiently large scale, the light was expensive, and it did not go into general use.

Later the dynamo-electric machine was developed, in which a powerful current of electricity was produced by revolving coils of wire in a field of magnetic force furnished by powerful permanent magnets, after which the arc electric light was successfully used in light-houses in England, and later (1867) in France. But, up to this time, no means had been devised for producing an adequate current of electricity for illumination at practicable cost, and it was not until the invention of the Gramme dynamo-electric machine, in 1872, that electricity was produced in a manner and of sufficient strength to render electric lighting practical and useful. This machine was afterwards improved in details of construction. In this state of the art Brush entered the field of invention, and on May 7, 1878, obtained patent No. 203,412 for his arc lamp, which was superior to any lamp that had preceded it. This lamp, however, was not capable of burning continuously more than eight or ten hours, and when used for all-night lighting it was necessary to extinguish the light and renew the carbons, and in order to obviate this defect Brush invented the lamp in suit. The invention, and the means by which it is carried out, are thus described in the specification :

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"My invention relates to electric lamps or light regulators ; and it consists, first, in a lamp having two or more sets of carbons adapted, by any suitable means, to burn successively—that is, one set after another ; second, in a lamp having two or more sets of carbons, each set adapted to move independently in burning and feeding ; third, in a lamp having two or more sets of carbons adapted each to have independent movements, and each operated and influenced by the same electric current ; fourth, in a lamp having two or more sets of carbons, by any suitable means being adapted to be separated dissimultaneously, whereby the voltaic arc between but a single set of carbons is

produced ; fifth, in the combination, with one of the carbons or carbon-holders of a lamp employing two or more sets of carbons, as above mentioned, of a suitable collar tube, or extended support, within or upon which the carbon or carbon-holder to which it is applied shall rest and be supported.

"I desire to state at the outstart that my invention is not limited in its application to any specific form of lamp. It may be used in any form of voltaic-arc light regulator, and would need but a mere modification in mechanical form to be adapted to an indefinite variety of the present forms of electric lamps.

"My invention comprehends broadly, any lamp or light regulator where more than one set of carbons are employed wherein—say, in a lamp having two sets of carbons—one set of carbons will separate before the other. For the purpose merely of showing and explaining the principle of operation and use of my invention, I shall describe it, in the form shown in the drawings, as applied to an electric lamp of the general type shown in the United States letters patent No. 203,411, granted to me May 7, 1878, re-issued May 20, 1879, and numbered 8,718. The leading feature of this type of regulator is that the carbon-holder has a rod or tube which slides through or past a friction-clutch, which clutch is operated upon to grasp and move said carbon-rod or holder, and thus to separate the carbons and produce the Voltaic-Arc Light ; and shall refer to such a lamp in my following description :

"A represents one set of carbons, A', another set, each carbon having an independent holder, B, B'. The carbon-holders B B' may either be in the form of a rod or tube, and each of them is made to pass through a clamping and lifting device, C C' respectively. These clamps and lifters, C C', are shown in the present instance in the shape of rings surrounding their respective carbon-holders B B'. This form, while I have found it for general purposes the best, is not necessarily the only form of clamp that may be used in carrying out my present invention. Each ring-clamp, C C', is adapted to be lifted from a single point, thus tilting it and causing it to grasp and lift its inclosed carbon-holder. This tilting and lifting movement is imparted to the clamp C C' by any suitable lifter, D, and this lifter may have its movement imparted either by magnetic attraction due to the current operating the lamp, or by the expansive action of heat upon any suitable apparatus connected with the lamp, said heat generated by the electric current operating the lamp.

"I do not, in any degree, limit myself to any specific method or mechanism for lifting, moving or separating the carbon points or their holders, so long as the peculiar functions and results hereinafter to be specified shall be accomplished. The
19 lifter D, in the present instance, is so formed that when it is raised it shall not operate upon the clamps C C'

simultaneously, but shall lift first one and then the other (preferably the clamp C first and C′ second, for reasons which will hereinafter appear). This function of dissimultaneous action upon the carbons or their holders, whereby one set of carbons shall be separated in advance of the other, constitutes the principal and most important feature of my present invention. In the lamp shown in the drawings, the lifter D is actuated and controlled through the agency of magnetic attraction due to the influence of the current operating the lamp, and this is accomplished as follows: One, two or more spools or hollow helices, E, of insulated wire are placed in the circuit, within whose cavities freely move cores E′. The electric current passing through the helices E, operate to strongly draw up within their cavities their respective cores E′, in the same manner as specified in my former patent above referred to. The cores E′ are rigidly attached to a common bar, E^2, and the upward and downward movement of this bar, due to the varying attraction of the helices E, is imparted by a suitable link-and-lever connection E^3 E^4, to the lifter D. By this connection the lifter will have an up and down movement in exact concert with the cores E′; and it is apparent that this connection between magnet and lifter may be indefinitely varied without any departure from my invention, and therefore, while preferring for many purposes the construction just specified, I do not propose to limit myself to its use.

"The lifter D may be so constructed and applied as to separate the carbon A and A′ successively or dissimultaneously, by being so balanced that any difference, however slight, between the weights of the carbons A A^1 or their holders B B^1 shall result in one being lifted and separated before the other.

"In order properly to balance the attractive force of the magnets, a coil-spring, F, or its equivalent, may be employed substantially as shown; and to insure a steady motion to the magnets and to the carbon points A A′, a dash-pot G, or its equivalent, should be employed, as this prevents any too sudden, abrupt or excessive movement of parts.

"H H′ are metallic cables through which the current is conducted from above the clamps C C′ to the carbons A A′. By this provision is not only insured a good connection between the upper carbon points and the mechanism above it, but another important advantage is obtained, and that is the prevention of sparks due to any interruption of the current between the carbon-holder B B′ and its clamps or bearings. This spark, if occurring too frequently, is liable to burn and roughen the rods B B′ or their bearings or clamps, and thereby render their operation uncertain, because it is important that a free movement to any degree, however minute, may be allowed the carbon-holder. These cables H H′, while operating as just specified, are suffi-

ciently flexible and yielding not to interfere with any movement of their respective carbons or carbon-holders.

"The operation of my device, as thus far specified, is as follows: When the current is not passing through the lamp, the positive and negative carbons of each set A A′ are in actual contact. When, now, a current is passed through the lamp, the magnetic attraction of the helices E will operate to raise the lifter D. This lifter, operating upon the clamps C and C′, tilts them and causes them to clamp and lift the carbon-holders B B′, and thus separate the carbons and produce the voltaic arc light; but it will be especially noticed that the lifting and separation of these carbons is not simultaneous. One pair is separated before the other, it matters not how little nor how short a time before. This separation breaks the circuit at that point, and the entire current is now passing through the unseparated pair of carbons A′; and now when the lifter, continuing to rise, separates these points, the voltaic arc will be established between them and the light thus produced.

"It will be apparent by the foregoing that it is impossible that both pairs of carbons A A′ should burn at once, for any inequality of weight or balance between them would result in one pair being separated before the other, and the voltaic arc would appear between the last-separated pair. This function, so far as I am aware, has never been accomplished by any previous invention, and by thus being able to burn independently and one at a time, two or more carbons in a single lamp, it is evident that a light may be constantly maintained for a prolonged period without replacing the carbons or other manual interference. In the form of the lamp shown, I can, with twelve-inch carbons, maintain a steady and reliable light without any manual interference whatever for a period varying from fourteen to twenty hours.

"It is for some reasons desirable that one set of carbons—say the set A—should be consumed before the other set commences to burn, although it is not essential, in carrying out my invention, that the carbons should be consumed in this manner, inasmuch as, if desirable, they may be arranged to burn alternately instead of successively. It is apparent, however, if one set of carbons can be made to entirely consume before another set begins to burn, that there will be less interruption of the light than if the different pairs were allowed to consume in frequent alternation. I have therefore shown, in the present invention, one method of securing a consumption of one set of carbons before another shall begin to burn. This I accomplish through any suitable support K, and in such a construction of the lifter D that it shall be positive in its function of separating one set of carbons before the other; or, in case where more than two sets of carbons are employed, to separate said sets successively.

" In the lamp as shown in the drawings the support K is in the form of a tube surrounding the carbon-holder B, and this support K is made of such a length that when the carbons A' shall have been sufficiently consumed a head upon the carbon-holder B will rest upon the top of the support K, whereby the weight of the carbon-holder B and its support K shall, at all times and under any circumstances, be supported by the lifter D.

" Besides the carbon-holder B, with its carbon, and the support K, the lifter D (when the lamp is in operation) should also be made to carry the carbon-holder B' and its carbons.

" The lamp is primarily adjusted so that the magnets, through the lifter D, shall always carry a definite load, to wit (in the lamp shown), the carbon-holders B and B' and support K. The desirability of this construction and arrangement may be explained as follows: Supposing as is designed in the present instance, the carbons A are first consumed. During that time, of course, the magnets are lifting both carbon-holders B B'. Now, when the carbons A are consumed, if no provision was made to the contrary, the carbon-holder B would not be lifted during the consumption of the carbons A', and this diminishment of the weight carried by the magnets would be liable to materially disturb the adjustment of the lamp and impair its operation accordingly. To obviate this difficulty I have provided the support K, by which provision the magnets shall be made to carry both carbon-holders B B' and the support K. The difference in weight, owing to the consumption of the carbons, is a practically unimportant matter, and does not materially interfere with the operation of the lamp.

" In the case of a lamp where the carbon-holders B B' are very light, and where the weight of one might be relieved from the magnet (or other moving agent), without material disturbance, the support K might be dispensed with. Said support K might also be omitted, if desired, in a lamp where the lifter is actuated through the agency of the expansion of a metal wire or bar by the action of heat generated by the current operating the lamp, inasmuch as the force due to said expansion being practically irresistible, it would not be so necessary to obtain a balance between various parts as in the case with a lamp as shown in the drawings.

21 " Thus far I have mentioned but two ways of imparting dissimultaneous motion to the carbons of an electric lamp, viz., through magnetic attraction and through the expansive action of heat. This function of my device may be accomplished by clockwork or equivalent mechanical contrivance; and in this respect, as before stated, I do not limit my invention.

" L L' are metallic hoods or protectors for inclosing and shielding the upper projecting ends of the carbon holders B B'.

"In the form of lamp shown in the drawing I obtain very satisfactory results by constructing the helices E according to letters patent, No. 212,183, granted to me February 11, 1879. In each helix, E, two independent wires surround the lifting magnets E', one of fine and one of course wire, and each placed in the general circuit operating the lamp. These two wires (the fine and the coarse) are constructed and connected in such a manner as to carry current in opposite directions around the inclosed core, thus exerting a neutralizing influence upon each other, whereby a governing function is secured, for a better description and understanding of which reference is made to said patent No. 212,183.

"The poles of the lamp shown in the drawings are constructed in the form of suspending hoops or loops, from which the lamp is suspended, and the corresponding hooks or loops with which they engage in the ceiling (or other locality where the lamps are used) are the positive and negative poles of the current generating apparatus. Thus, by the simple act of suspension the lamp is placed in circuit.

"I will now specify a construction whereby the protecting globe surrounding the light can be raised and lowered for convenience in renewing carbons and handling the lamp. This I accomplish by making the platform or gallery O, upon which the globe rests, vertically adjustable upon a rod O', attached to the lamp frame in any convenient manner. A set screw should be provided, whereby the globe can be adjusted to any desired position. By this arrangement the work of renewing carbons and the reliable adjustment of the globe in relation to the voltaic arc materially is assisted.

"In order to accommodate long sticks of carbons, the platform or gallery O should be perforated to allow passage down through it of said carbon sticks. I prefer making the platform or gallery O of metal, and of such shape as that globules of molten copper, from the coverings of the carbons, in dropping away, shall not escape to do damage.

"It will be particularly observed that in the form of dash-pot employed the cylinder is the movable and the piston or plunger the stationary element. This construction implies more than a mere reversal of the usual make and operation of the dash-pot, for by making the cylinder the movable element the general construction of a lamp can very often be materially simplified, as in the present instance. This form of dash-pot is designed to be employed in connection with any of the moving parts of the mechanism of an electric lamp where it is desired to retard a downward movement."

The lamp covered by patent No. 203,411 is referred to only for the purpose of illustrating the operation of the invention in suit,

and the complainants' right to the relief prayed for does not depend upon the validity of that patent. The lower carbon of this lamp is held in a fixed position, and its upper carbon is carried by a sliding rod which passes through a ring-clamp just large enough to permit it to slide freely through when the clamp lies flat on the floor of the regulator case, but which binds upon the rod when it is lifted by one edge. The lifter which is upon the edge of the clamp is attached to a soft-iron core which plays inside a wire helix, through which the current which produces the light circulates. The attracting strength of this coil is proportionate to the strength of the current flowing through it.

22 When there is no current flowing through the lamp, the coil has no attraction at all, and the core consequently rests at the lowest limit, and the ring-clamp lies flat on its floor. In that situation the carbon-rod slips freely through the clamp, and the upper carbon rests in contact with the lower one.

Upon the establishment of the current through the lamp it passes through the carbons with little resistance, because they are in actual contact. The current is, therefore, a strong one, and energizes the coil strongly, and it in turn attracts the core strongly and pulls it downward. This movement being communicated to the lifter, it, in turn, first lifts the ring-clamp by one edge; this causes it to impinge closely upon the rod and then lifts the rod and carbon, and so separates the carbon-points. This establishes the arc. But the arc introduces a resistance to the current which diminishes its strength, the resistance increasing as the arc grows longer. Hence, as the arc lengthens by the consumption of the carbons and the increase of the space between them, the current grows weaker, and the attracting power of the coil diminishes until it lets the core move downward sufficiently to release the grasp of the clamp on the rod, so that it slips downward. As the upper carbon approaches the lower, and so shortens the arc and diminishes its resistance, the current's strength increases, the coil again pulls the core upward and so tightens the clamp upon the rod and thus holds the upper carbon suspended at its normal distance from the lower. This process goes on until the carbons are consumed.

It will be observed from the description of the lamp in suit that when the current is first passed through it, the current divides at the lamp and passes through both pairs of carbons and instantly energizes the solenoids, draws upwardly the cores, and through the bar E^2, link E^3, lever E^4, and lifter D, separates the pairs of carbons A'. The separation of this pair of carbons does not operate to break the circuit and form an arc between them, but simply diverts the entire current through the remaining and unseparated pair of carbons A. The lifter D, continuing to rise, next separates the carbons A, thereby interrupting the

circuit and establishing the arc between the last separated pair of carbons A. After the arc has been established between one pair, the carbons of the remaining pair are held separated by the ring-clamp, their initial separation being such that the idle pair will be retained in their separated relation, while the regulator automatically moves and adjusts the burning pair, to separate or approximate them, as the conditions may require to regulate the length of the arc, and also to automatically feed them to maintain the arc. When the burning pair of carbons has been consumed, the effective pull of the solenoids is diminished to such an extent that the carbons of the idle pair are brought into contact, which causes the entire current to be instantly diverted through them, the effect of which is to strengthen the solenoids and separate the carbons and autimotically establish the arc between them.

The separation of the two pairs of carbons, so that the arc is established between one pair and maintained between the carbons of that pair until they have been consumed, and then automatically established between the carbons of the other pair and maintained between them until they have been consumed, is a dissimultaneous and successive arc-forming separation, and it is this feature which distinguishes the lamp in suit from all prior lamps.

The six claims of the patent which it is alleged are infringed, read :

"1. In an electric lamp, two or more pairs or sets of carbons, in combination with mechanism constructed to separate said pairs dissimultaneously or successively, substantially as and for the purpose specified.

23 "2. In an electric lamp, two or more pairs or sets of carbons, in combination with mechanism constructed to separate said pairs dissimultaneously or successively and establish the electric light between the members of but one pair (to wit, the pair last separated), while the members of the remaining pair or pairs are maintained in a separated relation, substantially as shown.

"3. In an electric lamp having more than one pair or set of carbons, the combination with said carbon sets or pairs of mechanism constructed to impart to them independent and dissimultaneous separating and feeding movements, whereby the electric light will be established between the members of but one of said pairs or sets at a time, while the members of the remaining pair or pairs are maintained in a separate relation, substantially as shown.

"4. In a single electric lamp, two or more pairs or sets of carbons, all placed in circuit, so that when their members are in contact the current may pass freely through all said pairs alike,

in combination with mechanism constructed to separate said pairs dissimultaneously or successively, substantially as and for the purpose shown.

"5. In an electric lamp wherein more than one set or pair of carbons are employed, the lifter D or its equivalent, moved by any suitable means, and constructed to act upon said carbons or carbon-holders dissimultaneously or successively, substantially as and for the purpose shown.

"6. In an electric lamp wherein more than one pair or set of carbons are employed a clamp, C, or its equivalent, for each said pair or set; said clamp, C, adapted to grasp and move said carbons or carbon-holders dissimultaneously or successively, substantially as and for the purpose shown."

It is admitted by the defendant's counsel that the patent in suit describes a new and useful mechanism for which Brush was entitled to a patent, but it is urged that the first, second, third and fourth claims are for functions or results without regard to mechanism, and are therefore void.

The claims are not open to this objection. This specification describes mechanism whereby a result may be accomplished, and the claims are not for mere functions, nor, fairly construed, can it be said that they cover other than equivalent means employed to perform the same functions. The first claim, construed in connection with the means described in the specification, is for an electric arc lamp, in which two or more pairs of carbons are used, the adjustable carbons of each pair being independently regulated by one and the same mechanism, and in which there is a dissimultaneous or successive separation of the pairs, so effected as to secure the continuous burning of one pair prior to the establishment of the arc between the other pair. Thus construed, the invention claimed is limited to the particular means described in the specification and their substantial equivalents.

The second, third and fourth claims also refer to the particular mechanisms described in the specification for the accomplishment of results covered by those claims.

They are for combinations of specific mechanisms and their substantial equivalents, and not for results irrespective of means for their accomplishment.

It is true that in the specification Brush declared: "I do not in any degree limit myself to any specific method or mechanism for lifting, moving or separating the carbon-points, or their holders, so long as the particular functions and results hereinafter to be specified shall be accomplished."

24 He did not say, however, that he claimed all mechanism, irrespective of their construction and modes of operation. By this language he simply notified the public that he did not restrict himself to the particular lamp described in

the patent, but that his invention embraced *that* and all other lamps operated in substantially the same way by equivalent mechanism.

It is urged that the fifth claim covers the lifter simply, and that the sixth claim covers nothing but the clamps, and being only for detached parts of the lamp, incapable of separately performing the function ascribed to them, and these claims are void.

The fifth claim is for a combination of which the lifter D is an element, and thus construed, the claim is for a novel and useful invention.

The sixth claim is not for the two clamps aside from other connected mechanism. It is for the two clamps in combination with the mechanism described in the patent for actuating the clamps and causing them to grasp and move the carbons dissimultaneously, substantially as and for the purpose described in the specification.

Patent No. 147,827, issued to Mathias Day, Jr., February 24, 1874, is relied on as an anticipation of the first, second and fourth claims of the patent in suit. This defense is based upon a construction of these claims that gives no effect to their concluding restrictive language, which construction, we have seen, is not authorized. The patent in suit describes mechanism which designedly and positively effects a dissimultaneous separation of the carbons, and Prof. Barker, the defendants' expert, testified that the Day lamp was not so constructed, and did not so operate. It is true that the Day patent describes a lamp which contains two or more pairs of carbons, but not such a double-carbon lamp as Brush invented. In the Day lamp each carbon is split or divided vertically for a slight distance from the outer end, but so rigidly connected at the clamp extremity as to set solely as a pair of separate carbons, and not as "two or more independent pairs or sets of carbons."

Owing to the constant and frequent shifting of the arc from one pair of carbons to the other, in this lamp, it produced an irregular and unsatisfactory light. It was unlike the Brush lamp both in construction and mode of operation.

The answer also denies infringement, but that defense, like the last one, is based on the theory that the claims are not at all limited by their concluding language. It is plain, from the evidence, that the defendants' lamp was designedly constructed so as to insure the dissimultaneous separation of the two pairs of carbons for the purpose of forming the arc between one pair only of the carbons, and that both lamps operate in identically the same way and for the same purpose. The patent describes a ring-clamp and the defendants use a hinged clamp, but there is not the slightest functional difference between them. Both

operate by grasping and holding with varying pressure the smooth rod which carries the carbons, thus allowing the rod to slide so as to secure a continuous feed by inappreciable degrees, while under other conditions the rod is allowed to slip suddenly by gravity. The ring-clamp was old, and Brush simply employed it as suitable for his purpose in combination with other elements with which it co-acts, and the substitution of the hinged clamp, without any change in the mode of operation or function, did not change the combination.

In the Brush lamp the clamps rest on a flat floor, and the arms of the lifter are of unequal length, so that when the lifter is raised, one clamp is tilted in advance of the other, and the carbons are separated dissimultaneously. In the defendants' lamp the same result is accomplished by supporting the clamps in different planes, and employing a lifter with arms of the same length, so that in the operation of the lifter it will tilt one clamp in advance of the other. Brush did not claim that there was invention in the lifter and clamps disconnected with other parts in the operation of the lamp, and the defendants can not escape infringement by showing that they use a lifter and clamps not identical in construction with the lifter and clamps described in the patent. It is admitted that if the claims are construed as embracing the mechanism described in the specification, the defendants use a lamp covered by the patent in suit, and that renders a further description of defendants' lamp unnecessary.

It is finally contended that, while the patent prescribes particular mechanism by which the functions stated in the claims can be performed, the patentee expressly declared in his specification that he did not limit himself to this mechanism, or its equivalent, but claimed that his invention comprehended all means capable of accomplishing the results stated, and that having thus claimed more than he was entitled to, the complainant can not recover until he disclaims everything in the specification except the specific mechanism.

An application for letters patent is accompanied by a specification giving a full general description of the alleged invention, and this is followed by what is known and well understood in the Courts, as well as in the Patent Office, as a "claim." What the patentee invents and describes in his specification, but fails to embrace in his claim, he abandons to the public, unless by timely application he obtains a reissue for it, and if in the descriptive part of his invention he inadvertently, or otherwise, includes a part of his invention that which is old, but does not claim it, his claim is not thereby invalidated. Such part of the specification is surplusage. It is only when the claim following the specification is too broad, in the sense of embracing some-

thing as new, which is not new, that the patentee is required by section 4,922 to disclaim. He is not required to disclaim anything in the specification not covered by his claim. The word "specification" is obviously used in the first clause of Section 4,922 as synonymous with "claim." I am aware of no decision holding that a patentee is required to disclaim anything in the descriptive part of his invention which is not fairly embraced within his claim.

In Railroad Company *vs.* Mellon (104 U. S., 118), the Court said: "In view, therefore, of the statute, the practice of the Patent Office, and the decisions of this Court, we think that the scope of letters patent should be limited to the invention covered by the claim, and that, though the claim may be illustrated, it can not be enlarged by the language used in other parts of the specification. We are, therefore, justified in looking to the 'claim' with which the specification of the appellee's invention concludes to determine what is covered by his letters patent."

It is not material for the purposes of this suit whether Brush was a pioneer, or a mere improver. It is sufficient that he described and illustrated in the patent in suit a specific mechanism, or double-carbon lamp, adapted to burn its carbons independently and successively; that he was the first to accomplish this result, and that the claims are for mechanism substantially as described in the patent in combination with two or more pairs of carbons or sets of carbons for producing the result specified. We have already stated that what is claimed is not functions and results, but mechanism for producing functions and results.

A decree will be erected in accordance with the prayer of the bill.

M. D. & L. L. LEGGETT,
H. A. SEYMOUR.
For Complainant.
R. S. TAYLOR,
For Defendant.

26 EXHIBIT B.

THE BRUSH ELECTRIC COMPANY
vs.
THE FORT WAYNE ELECTRIC LIGHT COMPANY, HENRY G. OLDS, PERRY A. RANDALL, AND RANALD T. MCDONALD. } In Chancery.

Present: Hon. WALTER Q. GRESHAM, *Circuit Judge.*

This cause having been brought to a final hearing upon the pleadings and proofs, and having been argued by counsel for

the respective parties, and the same having been duly considered by the Court, it is found and hereby ordered, adjudged, and decreed by the Court, as follows, to wit :

1. That the following letters patent of the United States, viz., letters patent No. 219,208, granted to Charles F. Brush, September 2, 1879, for improvement in electric lamps is a good and valid patent. That said Charles F. Brush was the first and original inventor of the improvements and inventions described and claimed in said letters patent No. 219,208, and that the complainant herein became and is invested with the exclusive right, title, and interest in and to said letters patent, as in said bill of complaint alleged.

2. That the said defendants, The Fort Wayne Electric Light Company, Henry G. Olds, Perry A. Randall, and Ranald T. McDonald, have infringed said letters patent, No. 219,208, granted to the said Charles F. Brush, by manufacturing and selling Arc Electric Lamps embodying the improvements set forth and claimed in the first, second, third, fourth, fifth and sixth claims of the said letters patent, and that the said defendants have violated and infringed the exclusive rights of the complainant secured to it by the said letters patent, in the manner set forth and shown in the pleadings and proofs in said cause.

3. That the said complainant is entitled to a discovery and accounting from said defendants of the gains, profits, benefits and advantages had and received by the said defendants, or either of them, as well as an accounting of and for such damages as the said complainant may have sustained through and by the acts of the defendants, or either them, and that the complainant recover said gains, profits, benefits and advantages which the said defendants have received or which have accrued to the said defendants, or either of them, from and by the aforesaid infringement of said letters patent No. 219,208 by the manufacture, use or sale of the improvements therein described and secured by the first, second, third, fourth, fifth and sixth claims thereof, or any of them, and such further damages as the said complainant may have sustained by reason of such infringement.

4. That this cause be referred to W. P. Fishback, a master in chancery of this Court, to take proofs and report to the Court an account of the gains, profits, benefits, and advantages which the said defendants, or either of them, have received, or which have arisen or accrued to them, or either of them, from infringing the exclusive rights of the said complainant, by the manu-
27 facture, use, or sale of the said improvements patented in said letters patent, as or substantially as described and secured, for the first, second, third, fourth, fifth, and sixth claims thereof, or any of them ; and also to state and report an account

of the damages which the said complainant has sustained by said infringement.

5. And it is further ordered, adjudged and decreed that the said master is hereby authorized to summon the defendants, their agents, employes, before him, as well as the officers and directors of the defendant corporation, and to examine them on oath; and to require the said defendants to produce their books, vouchers and documents touching the matters herein referred to; that the proofs already taken or used in this cause may be used on said reference, and that such other testimony may be taken before the master as is authorized by law and the rules of court, as either party may desire and said master may direct.

6. And it is hereby ordered, adjudged and decreed that the said defendants, the Fort Wayne Electric Light Company, Henry G. Olds, Perry A. Randall and Ranald T. McDonald, together with the officers, successors, or assigns, agents, attorneys and employes of the defendant corporation be, and they hereby are, perpetually enjoined and restrained from making, using, selling, or vending any arc electric lamps in which two or more pairs of carbons are independently adjusted and regulated by one and the same regulating mechanism, and are separated and burned successively, to secure the continuous burning of one pair of carbons prior to the establishment of the arc between the other pair, substantially as described in the specification, and claimed in the first claim of said letters patent No. 219,208, and also from making, using, selling or vending any electric arc lamps containing the invention, or inventions, substantially as described in the specification and claimed in the second, third, fourth, fifth or sixth claims, or any of said claims in said patent No. 219,208, or any imitation, or substantial equivalent thereof, constructed substantially as described in said specification, and as claimed in that said first, second, third, fourth, fifth or sixth claims, and that an injunction issue forthwith accordingly. And it is further ordered, adjudged and decreed that the defendants pay the costs herein to be taxed, and that the complainant have execution therefor.

(Signed) W. Q. GRESHAM.

January 13, 1890.

28

EXHIBIT C.

In the Circuit Court of the United States for the Northern District of Illinois.

THE BRUSH ELECTRIC COMPANY *against* THE BELVIDERE ELECTRIC LIGHT COMPANY and the SPERRY ELECTRIC COMPANY.	In Equity.

This cause coming on to be heard upon the motion of the complainant upon the bill and affidavits for a preliminary injunction to restrain the defendants, the Belvidere Electric Light Company and the Sperry Electric Company from infringing complainant's letters patent No. 219,208, granted to Charles F. Brush September 2, 1879, and assigned to complainant, by making, using or selling double-carbon arc lamps like, or substantially like, "Complainant's Exhibit Old Sperry Double Carbon Lamp;" and the parties being represented, the complainant by H. A. Seymour and C. K. Offield, and the defendants by F. W. Parker and J. L. Thompson; and it appearing to the Court, from the proof submitted, and from a comparison of said exhibit with complainant's patent, that the lamps complained of are the substantial equivalent of the invention disclosed and claimed in complainant's patent; it further appearing that the lamps like said exhibit were in use by the Belvidere Electric Light Company at Belvidere, within this district, subsequent to the date of complainant's patent, and prior to the commencement of this suit; and it further appearing on this motion that the defendant, the Sperry Electric Company, did not manufacture and has not used the lamps so used by the Belvidere Electric Light Company, or any arc lamps like said exhibit whereof infringement by said Sperry Electric Company is charged in the bill, said motion as to the Sperry Electric Company is therefore denied; and it is therefore ordered that a writ of injunction issue restraining the said defendants, the Belvidere Electric Light Company, its officers, agents, employes and attorneys, pending the hearing of this cause, from making, using or selling double-carbon arc lamps like, or substantially like, the said exhibit "Old Sperry Double Carbon Lamp."

W. Q. GRESHAM.

April 3, 1890.

29 EXHIBIT D.

United States Circuit Court, Northern District of Illinois.

BRUSH ELECTRIC COMPANY
vs. In Chancery.
SPERRY ELECTRIC COMPANY.

April 8, 1890.

The Sperry lamp is the substantial equivalent of the Brush lamp, and produces the same result.

An order will be entered as prayed for, to be operative at the end of twenty days.

W. Q. G.

NORTHERN DISTRICT OF ILLINOIS, *ss*:

I, William H Bradley, clerk of the Circuit Court of the United States, for said Northern District of Illinois, do hereby certify the above and foregoing to be a true and correct copy of the memorandum endorsed by the Hon. W. Q. Gresham, Circuit Judge on the brief of the defendant's counsel, in said Court, on the 8th day of April, A. D. 1890, in the cause wherein Brush Electric Company is the complainant, and Sperry Electric Company is the defendant, as the same appears from the original thereof, now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at my office in Chicago, in said District, Northern Division, this 9th day of April, A. D. 1890.

[SEAL.] WM. H. BRADLEY, *Clerk.*

30 EXHIBIT E.

In the Circuit Court of the United States for the Northern District of Illinois.

THE BRUSH ELECTRIC COMPANY
vs. In Chancery.
THE SPERRY ELECTRIC COMPANY.

Present: HON. WALTER Q. GRESHAM, *Circuit Judge*, and Hon. HENRY W. BLODGETT, *District Judge.*

This cause having been brought to a hearing upon the motion of the complainant upon the bill, and affidavits for a preliminary injunction to restrain the defendants, the Sperry Electric Company, from infringing complainant's letters patent No. 219,208, granted to Charles F. Brush, September 2, 1879, and assigned to complainant, by making, using, or selling double-carbon lamps embodying the invention, or inventions, of said patent, and having been argued by H. A. Seymour for complainant, and F.

W. Parker for defendant, and the same having been duly considered, the Court finds as follows, to wit:

That the double-carbon lamps manufactured by the defendants, The Sperry Electric Company, and produced before the Court—viz., one marked "Complainant's Exhibit New Sperry Double-Carbon Lamp," wherein the two pairs of carbons are independently actuated and adjusted and burned successively, the feeding carbon of one pair having a supplemental clamp or device whereby it may be manually latched up and retained, separated from its mate during the burning of the other pair, the latched-up carbon being then automatically released, and the arc established and maintained between the second pair of carbons until consumed; the other lamp, the construction of which is shown in defendant's drawings numbered 7 and 8, and wherein the two pairs of carbons are independently actuated and controlled and burned successively, and in which the feeding carbon of the idle pair is required to be manually latched up to insure such successive burning of the two pairs—each embody the invention of Charles F. Brush, as described in said letters patent No. 219,208, and specified in the first six claims thereof, and that the complainant is entitled to an injunction as prayed for, restraining the defendant company from manufacturing, selling or using either of such infringing lamps until the final hearing of this cause.

It is therefore ordered, adjudged and decreed, that the defendant, the Sperry Electric Company, its officers, agents, attorneys and employes, be, and they are hereby, enjoined until the final hearing of this cause, from directly or indirectly making, 31 selling, offering for sale, or using any double-carbon lamps, like or similar to those mentioned in the finding above set forth, or any arc electric lamps in which two or more pairs of carbons are independently adjusted and regulated, and are burned successively to secure the continuous burning of one pair of carbons prior to the establishment of the arc between the other pair, substantially as set forth and claimed in the first claim of letters patent No. 219,208, and also from making, using or selling any electric arc lamps containing the invention set forth and claimed in the second, third, fourth, fifth and sixth claims, or any of said claims in said patent No. 219,208. This order and decree to take effect on and after July 3, 1890.

W. Q. GRESHAM,
H. W. BLODGETT,
District Judge.

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EXHIBIT F.

In the Circuit Court of the United States for the District of Indiana.

THE BRUSH ELECTRIC COMPANY *vs.* THE NORDYKE AND MARMON COMPANY, ADDISON H. NORDYKE, DANIEL W. MARMON and AMOS K. HOLLOWELL.	In Chancery.

Present: Hon. WALTER Q. GRESHAM, *Circuit Judge.*

This cause having been brought to a hearing upon the motion of the complainant, upon the bill and affidavits for a preliminary injunction to restrain the defendants, the Nordyke and Marmon Company, Addison H. Nordyke, Daniel W. Marmon and Amos K. Hollowell, from infringing complainant's letters patent No. 219,208, granted to Charles F. Brush September 2, 1879, and assigned to complainant, by making, using or selling double-carbon lamps embodying the invention or inventions of said patent, and having been argued by the counsel for the respective parties, and the same having been duly considered, the Court finds as follows, to wit:

1. That the double-carbon lamps used and operated by the defendants, the Nordyke and Marmon Company, Addison H. Nordyke, Daniel W. Marmon and Amos K. Hollowell—viz., lamps like the one marked "Complainant's Exhibit Indianapolis Jenny Double-Carbon Lamp," wherein two pairs of carbons are independently adjusted and controlled, and burned successively, one pair of carbons being consumed prior to the establishment of the arc and the burning of the other pair of carbons—embodies the invention of Charles F. Brush, as disclosed in said letters patent No. 219,208, and pointed out in the first and other claims thereof, and that the complainant is entitled to an injunction, as prayed for, restraining the defendants, or any of them, from making or selling or using any of such infringing lamps pending the final hearing of this cause.

It is therefore ordered, adjudged and decreed that the defendants, the Nordyke and Marmon Company, Addison H. Nordyke, Daniel W. Marmon and Amos K. Hollowell, their officers, agents, attorneys and employes, be, and they are hereby, jointly and severally enjoined, pending the final hearing of this cause, from making, using or selling any double-carbon lamps like or similar to the lamp specified in the finding above set forth, or any arc electric lamps provided with two or more pairs of carbons adapted to be independently adjusted and regulated so as to burn the two pairs of carbons successively—that is, one set after the other—

substantially as set forth in said patent No. 219,208. This to take effect at the end of thirty days from date.

W. Q. GRESHAM.

June 12, 1890.

33 EXHIBIT G.

In the Circuit Court of the United States for the District of Indiana.

THE BRUSH ELECTRIC COMPANY
vs.
THE INDIANAPOLIS UNION RAILWAY COMPANY. } In Chancery.

Present: Hon. WALTER Q. GRESHAM, *Circuit Judge.*

This cause having been brought to a hearing upon the motion of the complainant, upon the bill and affidavits for a preliminary injunction to restrain the defendant, the Indianapolis Union Railway Company, from infringing complainant's letters patent No. 219,208, granted to Charles F. Brush September 2, 1879, and assigned to complainant, by using double-carbon lamps embodying the invention or inventions of said patent, and having been argued by counsel for the respective parties, and the same having been duly considered, the Court finds as follows, to wit:

That the double-carbon lamps used by the defendant, the Indianapolis Union Railway Company, and like the one produced before the Court—viz., the one marked "Complainant's Exhibit Indianapolis Jenny Double-Carbon Lamp," wherein two pairs of carbons are independently adjusted and controlled, and burned successively, one pair of carbons being consumed prior to the establishment of the arc and burning of the other pair—embodies the invention of Charles F. Brush, as described in letters patent No. 219,208, and as pointed out in the first and in other claims thereof, and that the complainant is entitled to an injunction, as prayed for, restraining the defendant from using any of such infringing lamps pending the final hearing of this cause.

It is therefore ordered, adjudged and decreed that the defendant, the Indianapolis Union Railway Company, its officers, agents, attorneys and employes, be, and they are hereby enjoined, pending the final hearing of this cause, from using any double-carbon lamps like or similar to the lamp mentioned in the finding above set forth, or any arc electric lamps provided with two or more pairs of carbons adapted to be independently adjusted and regulated so as to burn the two pairs of carbons successively—that is, one set after the other—substantially as set forth and claimed in said patent No. 219,208. This to take effect at the end of thirty days from date.

W. Q. GRESHAM.

June 12, 1890.

34

EXHIBIT H.

The Circuit Court of the United States for the Northern District of Ohio.

THE BRUSH ELECTRIC COMPANY
vs.
THE WESTERN ELECTRIC LIGHT AND POWER COMPANY, ET AL. } In Equity.

ON PLEADINGS AND PROOFS.

BROWN, *Judge.*

This was a bill in equity to recover damages for the infringement of letters patent No. 219,208, issued September 2nd, 1879, to Charles F. Brush, for an electric lamp. In the introduction of his specifications he states that his invention "relates to electric lamps or light regulators and it consists :

I. In a lamp having two or more sets of carbons adapted by any suitable means to burn successively ; that is, one set after another.

II. In a lamp having two or more sets of carbons, each set adapted to move independently in burning and feeding.

III. In a lamp having two or more sets of carbons adapted each to have independent movements and each operated and influenced by the same electric current.

IV. In a lamp having two or more sets of carbons, said carbons by any suitable means being adapted to be separated dissimultaneously whereby the voltaic arc between but a single set of carbons is produced.

35 V. Is immaterial.

To effect this result, he employs and shows a system of mechanism of which a lifter 'D' is a prominent feature. This lifter has a movement imparted to it by magnetic attraction due to the current operating the lamp, and in being raised lifts the upper or positive carbon of each set, not simultaneously, but one after the other, in such a manner that the arc is formed between the carbons last separated, which burns until they are consumed, when the carbon first raised is automatically lowered and the arc formed between the carbons first separated, which also burns until these are consumed. By multiplying the sets of carbons, this process may be continued until the last ones are consumed, and the light thus indefinitely prolonged. While this mechanism is elaborately explained and described, the patentee is careful not to limit himself to that or any other, and in his specification says expressly, "I do not in any degree limit myself to any specific method or mechanism for lifting, moving or separating the carbon points or their holders, so long as the peculiar func-

tions and results hereinafter to be specified shall be accomplished."

The claims alleged to be infringed were the first six, which are as follows :

"1. In an electric lamp, two or more pairs or sets of carbons in combination with mechanism constructed to separate said pairs dissimultaneously or successively, substantially as described and for the purpose specified."

"2. In an electric lamp, two or more pairs or sets of carbons in combination with mechanism constructed to separate said pairs dissimultaneously or successively, and establish the electric light between the members of but one pair (to wit,
36 the pair last separated) while the members of the remaining pair or pairs are maintained in a separate relation, substantially as shown."

"3. In an electric lamp having more than one pair or sets of carbons, the combination with said carbon sets or pairs of mechanism constructed to impart to them independent and dissimultaneously separating and feeding movements, whereby the electric light will be established between the members of but one of the said pairs or sets at a time, while the members of the remaining pair or pairs are maintained in a separated relation, substantially as shown."

"4. In a single electric lamp two or more pairs or sets of carbons all placed in circuit, so that when their members are in contact, the current may pass freely through all said pairs alike in combination with mechanism constructed to separate said pairs dissimultaneously or successively, substantially as and for the purpose shown."

"5. In an electric lamp wherein more than one set or pair of carbons are employed, the lifter "D," or its equivalent, moved by any suitable means and constructed to act upon said carbons or carbon holders dissimultaneously or successively, substantially as and for the purpose shown."

"6. In an electric lamp whereby more than one pair or set of carbons are employed, a clamp C, or its equivalent, for each pair or set, said clamp C adapted to grasp and move said carbons or carbon holders dissimultaneously or successively, substantially as and for the purpose shown."

Complainant was the assignee of this patent from Brush. The answer set up several patents, which were claimed to be anticipations and denied infringements in general terms.
37 The case was argued before Judge Ricks of the Northern District of Ohio, and Judge Brown of the Eastern District of Michigan; Messrs. L. L. Leggett and H. A. Seymour for the complainant; Messrs. John W. Munday, Ephraim Banning, George B. Barton for the defendants.

BROWN, J.

The progress of the art of electrical illumination has been marked by successive and well defined steps from the early experiment of Sir Humphrey Davy, in 1810, to its present perfected condition. Sir Humphrey seems to have succeeded with the aid of a galvanic battery of two thousand cells, in producing an arc shaped light between two pencils of charcoal, but owing to the rapid combustion of his charcoal, points to the want of proper mechanism for adjusting his electrodes, to compensate for wear, and to the great cost of his battery, his experiments were of no practical or commercial value. The first of these obstacles removed in 1844 by Foucalt, who substituted for the charcoal points of Davy the hard gas carbon electrodes now in use; the second in 1848, Archereau who devised an imperfect and clumsy regulating device by which two vertical carbon electrodes were maintained in the same relative position, notwithstanding their combustion, and the last in 1870, by the invention of the dynamo-electric machine of Gramme, wherein a current of sufficient strength to render electric lighting commercially practicable is generated at a comparatively small expense. These discoveries, and, in particular, the dynamo of Gramme, opened up to electrical experimentalists new and unexpected possibilities of usefulness, and henceforward inventions multiplied with great rapidity.

38 Most of them, however, were directed to improvements in the material of which the carbons were made; in the brilliancy and steadiness of the light itself; to improvements upon the dynamos, and in the mechanism by which the carbons were held in the same relative position during the process of combustion. One difficulty, however, remained to be overcome. The electrical resistance of the carbons was such as to preclude the employment of very long rods, and their consumption by burning away was hastened by their adjacent ends becoming highly heated to a considerable distance from the arc. This difficulty was partially remedied by covering the carbon pencils with a thin film of copper, electrically deposited thereon, by which the electrical resistance of the carbons was materially decreased ; much longer rods were possible, and the light maintained continuously for from six to ten hours. This was insufficient, however, for all night lighting and necessitated the extinguishment of the lamps and a renewal of the carbons at some time during the night, in order to keep up a continuous light.

To obviate this inconvenience, Mr. Brush invented the device embodied in the patent in suit, the most prominent feature of which is the use of double sets of carbons in such a manner that when the first pair is consumed, the arc is automatically established between the second pair, and is continued until they are consumed. This is accomplished by the use of certain helices

"E," which when the current is turned on are energized and operated to raise a lifter "D." This lifter acting upon two ring clamps "C C" surrounding the carbon-holders, tilts them, and causes them to clamp and lift the two carbon holders D D, not at exactly the same instant, but in a quick but imper-
39 ceptible succession; whereby the arc is established between the pair last separated, and held there until they are consumed (the first pair being meanwhile maintained in their position), when the first pair automatically descend and take their place. By this means, a steady light can be kept up without any manual interference whatever for a period of from 14 to 20 hours. This was certainly an important discovery, and even if his patent be not pioneer in the strict sense of the term, it is such a decided step in advance of anything which preceded it that defendants' experts, Warner & Kellogg, are constrained to admit not only that Brush was the first to invent the principle of substitution in his double carbon lamp, but that the Western Electric Company could not successfully compete with the companies using his patent in furnishing all night electric lighting plants unless it could provide double carbon lamps to its customers.

Such being the undisputed facts, we think that complainant is entitled to the favorable consideration of the Court, and his patent to a liberal construction—a construction which so far as consonant with the language the patentee himself has chosen, will protect him in what he has actually invented.

None of the devices set up in the answer contain the principle of the Brush patent; none of them are even worthy of being considered as anticipations, except the American patents to Day of 1874, Nos. 147,827 and 156,015, and the French patent to Benay-rouse of 1877, No. 3,170. The Day patent upon which defendants chiefly rely as an anticipation of the Brush patent as constructed by the complainant exhibit a single carbon lamp having two carbons instead of one, attached to each carbon holder, so that in the operation of the lamp both branches of the
40 carbon holder are raised and lowered *simultaneously*.

While the upper and lower carbons are in contact, the current is divided between them, but when separated to form the arc, though the separation of both sets occurs at the same instant, owing to the difference in resistance of the carbons, only a single arc is formed. When this arc has burned for a few minutes, the arc will shift to the other pair of carbons remaining until they are so far consumed as to require additional feeding, when the arc is shifted back to the first pair, and they are thus caused to burn alternately, instead of successively, as in the Brush patent. This alteration is, of course, owing to the fact that both sets of carbons are separated *simultaneously*, and not

in succession, as in the Brush patent, in which one is held in reserve until the first pair is wholly consumed. The Day Lamp, however, not only lacks the non-coincidence in the separation of the carbons, which is the prominent feature of the Brush patent, but in practice it never seems to have been a success. The shifting of the light from one pair of carbons to the other took place every few minutes, and was attended each time by a momentary extinguishment of the light, which occurred so frequently that it was not considered of any commercial value; and during the 16 years it has been in existence, but two lamps seem ever to have been constructed in accordance with the patent, one of which was tested in 1879, and proved a failure, and the other of which was made in 1887, for the purpose of being used as an exhibit in this cause. Not only was the light fluctuating and unsteady, but the idle pair of carbons so near the pair in operation threw a broad shadow back of them, which was transferred from one side of the lamp to the other as the arc shifted
41 and seriously impaired the commercial value of the lamp.

The French patent of Denayrouse, it is true, contains the principal feature of the Brush patent in the successive combustion of two pairs of carbons, but by means so different that they can by no stretch of construction be regarded as mechanical equivalents. The invention has no application to carbons placed end to end, as in the American patents, but to those lying side by side, as in the patent of Joblochkoff, who appears to have originated this arrangement. It is, in fact, a duplication of the Joblochkoff candle, with the addition of an electric key for making and breaking contact with the electric current for each such candle. This key is worked by one arm of a lever, the other arm of which has a stud pressed by a spring against the candle which is burning near its lower end. When this candle is burned nearly down so that the stud of the lever is no longer supported by the solid matter of the candle or carbon, the lever and key are moved by the spring, and contact is thus broken with the circuit for the nearly consumed candle, and is made with the circuit for a fresh candle, which is thereby kindled, and thus successively, as candle after candle becomes consumed, fresh candles are kindled automatically to take their place. But as this patent is not seriously claimed as an anticipation no further reference to it will be made.

The main questions in this case turn upon the proper construction of the Brush patent. While the claims are undoubtedly broad, they ought not to be interpreted as for a function or result, since there is nothing novel in substituting one pair of carbons for another, and thus securing a successive combustion of two or more pairs. It was done long before the Brush
42 patent, and may still be done by manual interference replacing one set of carbons with another, or by any mech-

anism which does not involve the dissimultaneous or successive separation of two pairs of carbons, or an independent and dissimultaneous separating and feeding movement.

What the claims purport to cover are briefly all forms of mechanism constructed to separate the two or more pairs of sets of carbons *dissimultaneously* (a word coined for the occasion but readily understood), or *successively*, in order that the light may be established between the member of but one pair or set at a time, while the members of the remaining pair are maintained in a separate relation. It is claimed by the defendants, however, that the words "dissimultaneously or successively," contained in the first six claims of the patent refer only to the exact instant, the very *punctum temporis*, of the separation of the carbons; and that as the Scribner patent, under which the defendants are operating, provides for the initial *simultaneous* separation of the carbons, there is no infringement; though the light is formed between but one pair, the other being held in reserve to await their consumption. If this contention be correct, then it necessarily follows that Brush, who is acknowledged to be the actual inventor of the double carbon, and whom defendants' expert, Mr. Lockwood, frankly admits (p. 243) to be justly regarded as having done more than any one else to make electric arc lightning on a large scale a practical success, secured by his patent the mere shade of an idea, a wholly immaterial and useful feature, abandoning to the world all that was really valuable in his invention.

In determining the proper construction of his claim two considerations ought to be kept prominently in view: 1st, the declared objects of the inventor; 2nd, the state of the art.

43 1. That he intended to secure for himself all he now claims is evident upon the most cursory reading of his patent. In the introduction of his specifications, he says that his invention consists, *First*, in a lamp having two or more sets of carbons adapted by any suitable means to burn successively; that is, one set after another. *Second*, in a lamp having two or more sets of carbons, each set adapted to move independently in burning and feeding. *Third*, in a lamp having two or more sets of carbons adapted each to have independent movements, and each operated and influenced by the same electric current. *Fourth*, in a lamp having two or more sets of carbons, said carbons by any suitable means being adapted to being separated dissimultaneously, whereby the voltaic arc between a single set of carbons is produced. "This last clause apparently for the very purpose of removing any doubt as to the object of the non-coincident separation of the carbons." Again, he says, "I do not in any degree limit myself to any specific method or mechanism for lifting, moving or separating the carbon points or their holders

so long as the peculiar functions and results hereinafter to be specified shall be accomplished. This function of dissimultaneous action upon the carbons or their holders, whereby one set of carbons shall be separated in advance of the other, constitutes the principal and most important feature of my present invention." These peculiar *functions and results* are subsequently described as follows:

"One pair is separated before the other; it matters not how little or how short a time before. This separation breaks the current at that point, and the entire current is now passing through the unseparated pair of carbons A, and now when the lifter continuing to rise, separates these points, the voltaic
44 arc will be established between them and the light thus produced. It will be apparent by the foregoing that it is impossible that both pairs of carbons A A' should burn at once. This function, so far as I am aware, has never been accomplished by any previous invention; and by thus being able to burn independently, and one at a time, two or more carbons in a single lamp, it is evident that a light may be constantly maintained for a prolonged period without replacing the carbon or other manual interference." This function is again re-stated in the second and third claims. It would seem that no language could make the object of the inventor clearer than that which he has chosen.

2. A reference to the state of the art already shown demonstrates that Brush was a pioneer in this branch of electrical construction. As an experienced electrician, it could hardly have escaped his attention that it is practically impossible with the most delicate adjustment of mechanism to keep up with the same current of electricity two distinct voltaic arcs for any length of time, owing to the inevitable different resistance of the two sets of carbons. If there had been any doubt upon that point, a reference to the Day patents would have solved it. These patents exhibit two pairs of carbons separated apparently simultaneously, but as the patentee states, "The current selects the route offering the least resistance, and therefore follows that pair of carbons in closest impact. When the points are separated, it continues to follow the same pair until the distance between them, resulting from waste, is too great, when the current weakens or breaks * * * The current chooses another pair of carbons, the magnets come into play, and the light is re-established."

45 Indeed, it is quite apparent from all the experiments connected with the arc lighting that the establishment of the arc between one pair of carbons, instead of both, was not necessarily due to the initial non-coincidence in the separation of the carbons, but also to the different powers of resistance of

different carbons of low resistance, which seems inevitable however delicately the mechanism be made or adjusted. In this view, it is difficult to see what object Brush could have had in patenting this feature, and we think, therefore, that the word "dissimultaneous" used in his claim should be construed as referring to that separation which results in the production of a single arc.

It is argued, however, by the defendants, that while the claims originally presented by Brush were broad enough to cover the feature of the successive burning of the two pairs of carbons, that these claims having been rejected as functional, he subsequently accepted narrower claims, and that, under the familiar principle that a patentee who has once acquiesced in the rejection of a claim cannot thereafter claim it by construction, applies in this case. If the premises be true, the conclusion is undoubtedly correct. The specifications were originally filed May 15, 1879, and the three first claims were rejected as "too broad or functional," but no objection was made to the fourth. These claims were again presented with a very slight and immaterial change, and were again rejected July 8th as "not materially changed." This called forth a protest from the patentee, who reframed his claims, but says in his letter that "these claims being fully as broad as any yet presented, we anticipate the same objection, and will therefore endeavor to show wherein the examiner * * * has erred."

46 He then enlarges upon the importance of the invention, denies that the claims are too broad or functional, states that his invention is a principal or method of removing the carbons in a double carbon lamp, and that "to prolong the time that any electric lamp will continue its light without any manual interference or attention is a vitally important matter," and urges the allowance of his claims. The new claims were presented July 14th and 15th, apparently in person, and the patent was allowed on the following day. On comparing the claims as originally presented with those finally allowed, we find the changes to be of little consequence. The first was changed only by erasing the words, "whereby the voltaic arc is established between members of but a single pair, to wit, the pair last separated," but as the words.....

.....

the change was not an abandonment of this feature. Certainly the first claim is no narrower than it was before. In the second original claim the words, "each pair or set adapted to have independent separating and feeding movements" are erased, and the words, "in combination with mechanism constructed to separate said pairs dissimultaneously or successively," substituted, but with words added showing the object to be "to establish the

electric light between the members of but one pair." In the third claim the word "dissimultaneous" is combined both with "separating" and "feeding" movements, indicating very clearly the object of the patentee. But it is quite unnecessary to analyze these claims at length. Taken in connection with the correspondence they show that the examiner yielded to the view of the patentee, and allowed the claims in such terms as to express his theory of the invention.

47 In the view we have taken of the proper construction of this patent, the question of infringement presents no difficulty. The defendant company admits that it used in Toledo in the course of its business, for the purposes of commercial lighting, a number of double carbon lamps similar to complainant's exhibit "defendant's lamp," but insists that such exhibit has been injured or changed by the twisting of the lifting lever and the bending of the clutch lever, so that it is in an abnormal condition. This exhibit shows a complicated piece of mechanism, by means of which the electric current entering the lamp is divided —a portion being used to energize two magnets "AA," the object of which is, through a system of levers, to raise the two carbon rods; when the arc is established between one pair of carbons, the other is lifted and held in reserve by a retaining magnet until the first pair is consumed. In this exhibit there is a perceptible dissimultaneous initial separation of the two pairs of carbons, and hence an infringement of complainant's lamp, even according to the narrow interpretation put upon it by the defendant; but it is insisted that this is an accident in the construction or use of this particular lamp. The testimony of Mr. Holen, a witness for the complainant, shows that in February, 1887, he examined a lamp at defendant's station in Toledo, similar to complainant's exhibit, "defendant's lamp," and that the mechanism was such that one of the carbons was raised a little before the other and that he noticed about eighteen other similar lamps in operation in Toledo. Mr. Adams, another witness; swears that he visited Toledo the following year, and saw these lamps, and that all he observed were burning on the same side, that the next morning he looked at the same lamps, and

48 always found the burned out pair of carbons upon one side, and the other only partially consumed, and that upon manual manipulation of some of these lamps, one or two separated their carbons with a visible want of co-incidence. This is certainly strong evidence to indicate a purpose on the part of the designer or the manufacturer of these lamps that the separation of the carbons should be simultaneous. This testimony, however, is denied by defendant's witness Warner, who examined the same lamps, and found but two in which the separation did not take place simultaneously, which he judged

to be due to rough handling by those having charge of them. We do not care, however, to discuss this testimony at length, or to dispose of this case upon the theory that the defendants have made use of a few lamps, which in practical operation may have separated their carbons dissimultaneously, and thus have infringed the Brush patent, upon defendant's own interpretation of it.

The Scribner lamp which defendants are using, undoubtedly contemplates an initial simultaneous or coincident separation of the two pairs of carbons, and in this particular differs from the Brush patent. They are all alike, however, in the vital feature that the final or arc-forming separation is dissimultaneous, and in the total consumption of one pair of carbons before the other. In the Brush patent, the order of combustion is predetermined by the initial coincidence of the separation; in the Scribner patent, it is a matter of chance depending upon the relative resisting power of the carbons or of the retaining magnets, which is first consumed; in other words, the non-coincidence is a function of both patents, but in one it is a matter of calculation, and in the other a matter of accident. Undoubtedly if the Scribner patent had preceded that of Brush, the latter would have to be limited to the initial coincidence of separation; but as it
49 precedes the other, we think it entitled to a liberal interpretation. If we are correct in this view then, as the Scribner patent contemplates a dissimultaneous arc-forming separation by mechanism, certainly not radically different from that of Brush, we are constrained to hold it an infringement. It is unnecessary to go into the details of the Scribner device, so long as by mechanism it accomplishes automatically the function of the Brush patent. We think the language of the Supreme Court in the case of the Morley Sewing Machine Co. *vs.* Lancaster, is applicable to this patent.

"He was not a mere improver upon a prior machine which was capable of accomplishing the same general result, in which case his claim would properly receive a narrower interpretation. This principle is well settled in the patent law both in this country and in England. Where an invention is one of a primary character, the mechanical functions performed by the machine are, as a whole, entirely new; all subsequent machines which employ substantially the same means to accomplish the same results are infringements, although the subsequent machines may contain improvements in separate mechanisms which go to make up the machine."

We should have felt fully justified in disposing of this case by a single reference to the opinion of Judge Gresham, in the Brush Electric Company *vs.* Fort Wayne Electric Light Co., in which the same construction was placed upon the Brush patent,

but in view of the importance of the questions involved, and of the elaborate preparation of counsel, we have deemed it proper to give it an independent consideration.

We are clearly of opinion that complainant is entitled to relief in this case, and a decree will, therefore, be entered for
50 an injunction, and the usual reference to a master to assess and report its damages.

I concur in the foregoing opinion.

(Signed) AUGUSTUS J. RICKS,
District Judge.

51 EXHIBIT I.

In the Circuit Court of the United States for the District of Indiana.

THE BRUSH ELECTRIC COMPANY
vs.
FORT WAYNE ELECTRIC COMPANY ET AL. } In Equity, No. 8,609.

BLODGETT, *J.*

This is a bill for an injunction and accounting by reason of the alleged infringement of Patent No. 219,208, granted to Charles F. Brush, on the 2d day of September, 1878, for "An Electric Lamp."

The suit was commenced on the 1st day of July last, and complainant very soon thereafter moved for an injunction *pendente lite*, which motion was heard in the early part of October last. This patent has been four times before the Courts of this Circuit, and once before the Circuit Court for the Northern District of Ohio, presided over by Judge Brown of the Eastern District of Michigan, and Ricks of the Northern District of Ohio, in all which cases the patent was carefully considered in the light of the prior art, and its novelty and utility fully sustained.

The only question seriously contested upon this hearing for injunction was, that of the alleged infringement of the defendants' device upon the device covered by the complainant's patent.

The defendants manufacture electric lamps made substantially in accordance with a patent granted to James J. Wood on the 24th of June last.

52 The Wood lamp, like that of Brush, is a duplex lamp, organized to burn two or more pairs of carbons successively, but the feeding device of the Wood lamp is partially actuated by clock work, instead of its being operated entirely by action of the electric current, as in the Brush.

In the Wood lamp, however, the clock-work mechanism is brought into action and controlled by the electric current.

The distinguishing feature of the Brush lamp is, the arrangement of the feeding mechanism, so that the carbons of the two pairs shall be dissimultaneously separated for the purpose of forming the arc, and that after the arc is formed, one of the carbons of the pair between which the arc is formed, shall be fed toward the other as fast as it is consumed, so as to preserve a steady and uniform light, and that when the first pair of carbons is fully consumed, the current is automatically transferred to the other pair, and the arc is formed between them, which are in turn fed up by the feeding device until consumed. The Wood lamp has the same characteristics; the carbons of each pair are dissimultaneously separated, and the arc is formed by the action of the current passing through magnetic coils, as is done in the Brush lamp, but the feeding as the burning carbons are consumed is regulated in Wood's lamp by a clock-work.

It does not seem to us that the interposition of this clock-work to do the feeding after the arc is formed essentially differentiates the Wood device from that of Brush; the electric current is the efficient motor in both lamps for forming the arc and controlling the action of the feeding mechanisms. Brush evidently saw that the feeding could be done in many ways after the arc was established. He showed a clutch mechanism for doing the
53 feeding, but expressly says in his specifications:

"I do not in any degree limit myself to any specific method or mechanism for lifting, moving or separating the carbon points or their holders so long as the peculiar functions and results hereinafter to be specified shall be accomplished." and further on his specifications he suggests that clock-work may be substituted for his clutch meahanism.

Before Brush entered the field, electric lamps had been contrived which burned two sets of carbons alternately; shifting the arc from one pair to the other at short intervals, making a flashing, unsteady, and unsatisfactory light. The problem which Brush set himself to solve was to secure the complete combustion of one pair of carbons before the arc was transferred to the other pair; and the transfer of the arc to the other pair by the automatic action of the electric current, so that no attendant was needed to light the second pair after the first was consumed; thus securing a lamp which would give a steady arc light of from sixteen to twenty hours' duration. This he accomplished by his mechanism, which caused the dissimultaneous separation of the two pairs of carbons by the automatic action of the electric current, actuating his separating devices, and a feeding device for bringing the carbons together as fast as they were consumed. This long step forward in the art was taken by Brush;

and at the present stage of the art it seems that the inexorable law of the electric current requires that when two or more pairs of carbons are to be burned successively, the carbons of each pair must be dissimultaneously separated, and the arc produced between the pair last separated. Having done this for the art, Brush is entitled to cover all means equivalent to his own
54 for obtaining the same result, one of which is a clock-work feeding device.

The argument ingeniously and ably made in behalf of defendant is, that Wood has evolved his lamp along the lines indicated by the inventions of Denayrouse and Meynall, who had preceded Brush. But neither of these inventors produced a lamp where the carbons would be burned successively. It seems to be the history of many great inventions that the minds of many persons, without any concert of action, are at about the same time attracted to the subject, and each sets himself at work to invent a mechanism which shall produce the desired new result, meet the felt public want. One of the experimentors succeeds, while all the rest fail. After the one has succeeded, it is easy to go back into the limbo of these old failures, and in the light of the successful machine, by perhaps slight changes, make these old obortive attempts do the work of the successful inventor.

But it is the successful experimenter who has shown them the way, and he, and he alone, who is entitled to be called the inventor and be protected by a patent. The successful inventor may even have taken advantage of hints and suggestions from the abortive attempts of others, but that does not entitle them or any one else to appropriate his successful machine.

It was strenuously urged by the able counsel for the defendant, both in his oral and printed arguments, that the Brush patent shows two feeding devices, while the Wood lamp shows but one feeding device, or mechanism.

This position, if correct, would hardly, we think, answer the charge of infringement, but we do not entirely agree with the learned counsel in his position that Wood has only one
55 feeding device. The clock-work mechanism of Wood is, practically, as much a separate device for each pair of carbons as the clutch mechanism of Brush; for while Wood's clock-work is made to feed each pair of carbons in turn, it feeds the first by one pinion and the next one by another pinion, after the arc has been produced between the second pair by the action of the electric current, thereby making his device as much a duplex feeding device as is that of Brush.

The feature of the Wood lamp which allows the attendant, when he lights the lamp, or puts the lamp in circuit, to separate the carbons of one pair by hand, instead of allowing that to be done by the operation of the electric current, as is done by Brush,

does not, it seems to us, in any degree evade the Brush patent, because it clearly appears from the proof and operation of the machines, as exhibited upon the hearing of the motion, that if the attendant did not latch up the upper carbon of one pair, the machine itself would automatically do so, the same as it is done in the Brush lamp ; and the manual separation of one pair of carbons, even before the lamp is lighted, is nothing but the adoption of Brush's dissimultaneous law, and it leaves the arc to be formed between the pair of carbons last separated.

In this, as in almost all cases on infringement, there are slight differences in mode of construction and devices for the result accomplished by the patent. It is rare that we find an infringing machine which is copied with Chinese fidelity from that which it is claimed to infringe ; but the infringers always endeavor to escape the charge of infringement by some modifications which shall apparently cause their machine to differ from that of the patentee. The essential thing, however, to be considered in all such cases, is whether the principle embodied in the
56 patent has been substantially used by the defendant ; and if we find that it has been so substantially used, it is the duty of the Court to protect the patentee, however ingenious may be the mode of infringement.

The motion for an injunction is, therefore, sustained.

UNITED STATES OF AMERICA, } ss.
District of Indiana. }

I, Noble C. Butler, Clerk of the Circuit Court of the United States for the District of Indiana, do hereby certify that the above and foregoing is a full, true and complete copy of the opinion of the Court filed in my office on the 10th day of December, 1890, in the cause of The Brush Electric Company *vs.* Fort Wayne Electric Company, No. 8,609, as fully as the same remains on file in my office.

Witness my hand and the seal of said Court, at Indianapolis, in said district, this 27th day of December, 1890.

[SEAL.] NOBLE C. BUTLER, *Clerk.*

57 UNITED STATES PATENT OFFICE.

Charles F. Brush, of Cleveland, Ohio. Electric Lamp.

Specification forming part of Letters Patent No. 219,208, dated September 2, 1879; application filed May 15, 1879.

To all whom it may concern:

Be it known that I, CHARLES F. BRUSH, of Cleveland, in the County of Cuyahoga and State of Ohio, have invented certain

new and useful Improvements in Electric Lamps; and I do hereby declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it pertains to make and use it, reference being had to the accompanying drawings, which form part of this specification.

My invention relates to electric lamps or light regulators; and it consists, first, in a lamp having two or more sets of carbons adapted, by any suitable means, to burn successively—that is, one set after another; second, in a lamp having two or more sets of carbons, each set adapted to move independently in burning and feeding; third, in a lamp having two or more sets of carbons adapted each to have independent movements, and each operated and influenced by the same electric current; fourth, in a lamp having two or more sets of carbons, said carbons by any suitable means being adapted to be separated dissimultaneously, whereby the voltaic arc between but a single set of carbons is produced; fifth, in the combination, with one of the carbons or carbon-holders of a lamp employing two or more sets of carbons, as above mentioned, of a suitable collar tube, or extended support, within or upon which the carbon or carbon-holder to which it is applied shall rest and be supported.

In the drawings, Figure 1 is an isometrical view of a lamp embodying my invention, the said lamp operating two sets of carbons. Accompanying Fig. 1 is a diminished view of the lamp, showing its general appearance and proportions. In this figure of drawings appears mechanism (marked M M′ M^2) representing a device for automatically shunting or cutting the lamp from circuit when, from any cause, said lamp shall offer an abnormally great resistance to the current operating it; but I do not here lay any claim to this or any other device or method for accomplishing the function just referred to, as I have made that the subject of another application. Fig. 2 is a detached view of the parts operating to lift the carbon-rods, and thus to dissimultaneously separate the carbons of the two sets there shown. Fig 3 is a detached view, showing a supporting device (here appearing as a tube surrounding a carbon-holder) between the carbon lifting or separating apparatus and one of the lifted carbons; and Fig. 4, a section view of the device shown in Fig 1.

I desire to state at the outstart that my invention is not limited in its application to any specific form of lamp. It may be used in any form of voltaic-arc light regulator, and would need but a mere modification in mechanical form to be adapted to an indefinite variety of the present known forms of electric lamps.

My invention comprehends broadly, any lamp or light regulator where more than one set of carbons are employed where-

in—say, in a lamp having two sets of carbons—one set of carbons will separate before the other. For the purpose merely of showing and explaining the principles of operation and use of my invention, I shall describe it, in the form shown in the drawings, as applied to an electric lamp of the general type shown in the United States letters patent No. 203,411, granted to me May 7, 1878, re-issued May 20, 1879, and numbered 8,718. The leading feature of this type of regulator is that the carbon-holder has a rod or tube which slides through or past a friction-clutch, which clutch is operated upon to grasp and move said carbon-rod or holder, and thus to separate the carbons and produce the voltaic-arc light; and shall refer to such a lamp in my following description:

A represents one set of carbons; A′, another set, each carbon having an independent holder, B, B′. The carbon-holders B B′ may either be in the form of a rod or tube, and each of them is made to pass through a clamping and lifting device, C C′ respectively. These clamps and lifters, C C′, are shown in the present instance in the shape of rings surrounding their respective carbon-holders B B′. This form, while I have found it for general purposes the best, is not necessarily the only form of clamp that may be used in carrying out my present invention. Each ring-clamp, C C′, is adapted to be lifted from a single point, thus tilting it and causing it to grasp and lift its inclosed carbon-holder. This tilting and lifting movement is imparted to the clamp C C′ by any suitable lifter, D, and this lifter may have its movement imparted either by magnetic attraction due to the current operating the lamp, or by the expansive action of heat upon any suitable apparatus connected with the lamp, said heat generated by the electric current operating the lamp.

I do not, in any degree, limit myself to any specific method or mechanism for lifting, moving or separating the carbon points or their holders, so long as the peculiar functions and results hereinafter to be specified shall be accomplished. The lifter D, in the present instance, is so formed that when it is raised it shall not operate upon the clamps C C′ simultaneously, but shall lift first one and then the other (preferably the clamp C first and C′ second, for reasons which will hereinafter appear). This function of dissimultaneous action upon the carbons or their holders, whereby one set of carbons shall be separated in advance of the other, constitutes the principal and most important feature of my present invention. In the lamp shown in the drawings, the lifter D is actuated and controlled through the agency of magnetic attraction due to the influence of the current operating the lamp, and this is accomplished as follows: One, two or more spools or hollow helices, E, of insulated wire are placed in the circuit, within whose cavities

freely move cores E'. The electric current passing through the helices E, operate to strongly draw up within their cavities their respective cores E', in the same manner as specified in my former patent above referred to. The cores E' are rigidly attached to a common bar, E^2, and the upward and downward movement of this bar, due to the varying attraction of the helices E, is imparted by a suitable link-and-lever connection E^3 E^4, to the lifter D. By this connection the lifter will have an up and down movement in exact concert with the cores E'; and it is apparent that this connection between magnet and lifter may be indefinitely varied without any departure from my invention, and therefore, while preferring for many purposes the construction just specified, I do not propose to limit myself to its use.

The lifter D may be so constructed and applied as to separate the carbon A and A' successively or dissimultaneously, by being so balanced that any difference, however slight, between the weights of the carbons A A^1 or their holders B B^1 shall result in one being lifted and separated before the other.

In order properly to balance the attractive force of the magnets, a coil-spring, F, or its equivalent, may be employed substantially as shown; and to insure a steady motion to the magnets and to the carbon points A A', a dash-pot G, or its equivalent, should be employed, as this prevents any too sudden, abrupt or excessive movement of parts.

H H' are metallic cables through which the current is conducted from above the clamps C C' to the carbons A A'. By this provision is not only insured a good connection between the upper carbon points and the mechanism above it, but another important advantage is obtained, and that is the prevention of sparks due to any interruption of the current between the carbon-holder B B' and its clamp or bearings. This spark, if occurring too frequently, is liable to burn and roughen the rods B B' or their bearings or clamps, and thereby render their operation uncertain, because it is important that a free movement to any degree, however minute, may be allowed the carbon-holder. These cables H H', while operating as just specified, are sufficiently flexible and yielding not to interfere with any movement of their respective carbons or carbon-holders.

The operation of my device, as thus far specified, is as follows: When the current is not passing through the lamp, the positive and negative carbons of each set A A' are in actual contact. When, now, a current is passed through the lamp, the magnetic attraction of the helices E will operate to raise the lifter D. This lifter, operating upon the clamps C and C', tilts them and causes them to clamp and lift the carbon-holders B B', and thus separate the carbons and produce the voltaic arc light; but it will be especially noticed that the lifting and separation

of these carbons is not simultaneous. One pair is separated before the other, it matters not how little nor how short a time before. This separation breaks the circuit at that point, and the entire current is now passing through the unseparated pair of carbons A′; and now when the lifter, continuing to rise, separates these points, the voltaic arc will be established between them and the light thus produced.

It will be apparent by the foregoing that it is impossible that both pairs of carbons A A′ should burn at once, for any inequality of weight or balance between them would result in one pair being separated before the other, and the voltaic arc would appear between the last-separated pair. This function, so far as I am aware, has never been accomplished by any previous invention, and by thus being able to burn independently and one at a time, two or more carbons in a single lamp, it is evident that a light may be constantly maintained for a prolonged period without replacing the carbons or other manual interference. In the form of the lamp shown, I can, with twelve-inch carbons, maintain a steady and reliable light without any manual interference whatever for a period varying from fourteen to twenty hours.

It is for some reasons desirable that one set of carbons—say the set A—should be consumed before the other set commences to burn, although it is not essential, in carrying out my invention, that the carbons should be consumed in this manner, inasmuch as, if desirable, they may be arranged to burn alternately instead of successively. It is apparent, however, if one set of carbons can be made to entirely consume before another set begins to burn, that there will be less interruption of the light than if the different pairs were allowed to consume in frequent alternation. I have therefore shown, in the present invention, one method of securing a consumption of one set of carbons before another shall begin to burn. This I accomplish through any suitable support K, and in such a construction of the lifter D that it shall be positive in its function of separating one set of carbons before the other ; or, in case where more than two sets of carbons are employed, to separate said sets successively.

In the lamp as shown in the drawings the support K is in the form of a tube surrounding the carbon-holder B, and this support K is made of such a length that when the carbons A′ shall have been sufficiently consumed a head upon the carbon-holder B will rest upon the top of the support K, whereby the weight of the carbon-holder B and its support K shall, at all times and under any circumstances, be supported by the lifter D.

Besides the carbon-holder B, with its carbon, and the support K, the lifter D (when the lamp is in operation) should also be made to carry the carbon-holder B′ and its carbon.

The lamp is primarily adjusted so that the magnets, through the lifter D, shall always carry a definite load, to wit (in the lamp shown), the carbon-holders B and B′ and support K. The desirability of this construction and arrangement may be explained as follows: Supposing as is designed in the present instance, the carbons A are first consumed. During that time, of course, the magnets are lifting both carbon-holders B B′. Now, when the carbons A are consumed, if no provision was made to the contrary, the carbon-holder B would not be lifted during the consumption of the carbons A′, and this diminishment of the weight carried by the magnets would be liable to materially disturb the adjustment of the lamp and impair its operation accordingly. To obviate this difficulty I have provided the support K, by which provision the magnets shall always be made to carry both carbon-holders B B′ and the support K. The difference in weight, owing to the consumption of the carbons, is a practically unimportant matter, and does not materially interfere with the operation of the lamp.

In the case of a lamp where the carbon-holders B B′ are very light, and where the weight of one might be relieved from the magnet (or other moving agent), without material disturbance, the support K might be dispensed with. Said support K might also be omitted, if desired, in a lamp where the lifter is actuated through the agency of the expansion of a metal wire or bar by the action of heat generated by the current operating the lamp, inasmuch as the force due to said expansion being practically irresistible, it would not be so necessary to obtain a balance between various parts as is the case with a lamp as shown in the drawings.

I have incidentally mentioned in the foregoing specification a lamp wherein the voltaic-arc is produced by a separation of the carbons due to the expansive action of heat, however generated, upon a metal wire or bar. It is my intention to apply for a patent upon a lamp involving this principle, and I therefore do not waive, by anything contained in this specification, any right of application for patent upon such a type of regulator.

Thus far I have mentioned but two ways of imparting dissimultaneous motion to the carbons of an electric lamp, viz., through magnetic attraction and through the expansive action of heat. This function of my device may be accomplished by clockwork or equivalent mechanical contrivance; and in this respect, as before stated, I do not limit my invention.

L L′ are metallic hoods or protectors for inclosing and shielding the upper projecting ends of the carbon holders B B′.

In the form of lamp shown in the drawings I obtain very satisfactory results by constructing the helices E according to letters patent, No. 212,183, granted to me February 11, 1879. In

each helix, E, two independent wires surround the lifting magnets E', one of fine and one of course wire, and each placed in the general circuit operating the lamp. These two wires (the fine and the coarse) are constructed and connected in such a manner as to carry current in opposite directions around the inclosed core, thus exerting a neutralizing influence upon each other, whereby a governing function is secured, for a better description and understanding of which reference is made to said patent No. 212,183.

The poles of the lamp shown in the drawings are constructed in the form of suspending hoops or loops, from which the lamp is suspended, and the corresponding hoops or loops with which they engage in the ceiling (or other locality where the lamps are used) are the positive and negative poles of the current generating apparatus. Thus, by the simple act of suspension the lamp is placed in circuit.

I will now specify a construction whereby the protecting globe surrounding the light can be raised and lowered for convenience in renewing carbons and handling the lamp. This I accomplish by making the platform or gallery O, upon which the globe rests, vertically adjustable upon a rod O', attached to the lamp frame in any convenient manner. A set screw should be provided, whereby the globe can be adjusted to any desired position. By this arrangement the work of renewing carbons and the reliable adjustment of the globe in relation to the voltaic arc are materially assisted.

In order to accommodate long sticks of carbons, the platform or gallery O should be perforated to allow passage down through it of said carbon sticks. I prefer making the platform or gallery O of metal, and of such shape as that globules of molten copper, from the coverings of the carbons, in dropping away, shall not escape to do damage.

It will be particularly observed that in the form of dash-pot employed the cylinder is the movable and the piston or plunger the stationary element. This construction implies more than a mere reversal of the usual make and operation of the dash-pot, for by making the cylinder the movable element the general construction of a lamp can very often be materially simplified, as in the present instance. This form of dash-pot is designed to be employed in connection with any of the moving parts of the mechanism of an electric lamp where it is desired to retard a downward movement.

What I claim is :

1. In an electric lamp, two or more pairs or sets of carbons, in combination with mechanism constructed to separate said pairs dissimultaneously or successively, substantially as and for the purpose specified.

2. In an electric lamp, two or more pairs or sets of carbons, in combination with mechanism constructed to separate said pairs dissimultaneously or successively, and establish the electric light between the members of but one pair (to wit, the pair last separated), while the members of the remaining pair or pairs are maintained in a separated relation, substantially as shown.

3. In an electric lamp having more than one pair or set of carbons, the combination, with said carbon sets or pairs, of mechanism constructed to impart to them independent and dissimultaneous separating and feeding movements, whereby the electric light will be established between the members of but one of said pairs or sets at a time, while the members of the remaining pair or pairs are maintained in a separate relation, substantially as shown.

4. In a single electric lamp, two or more pairs or sets of carbons, all placed in circuit, so that when their members are in contact the current may pass freely through all said pairs alike, in combination with mechanism constructed to separate said pairs dissimultaneously or successively, substantially as and for the purpose shown.

5. In an electric lamp wherein more than one set or pair of carbons are employed, the lifter D, or its equivalent, moved by any suitable means, and constructed to act upon said carbons or carbon-holders dissimultaneously or successively, substantially as and for the purpose shown.

6. In an electric lamp wherein more than one pair or set of carbons are employed, a clamp, C, or its equivalent, for each said pair or set, said clamps C adapted to grasp and move said carbons or carbon-holders dissimultaneously or successively, substantially as and for the purpose shown.

7. In an electric lamp, the combination, with a carbon-holder and the mechanism moving said carbon-holder, of a lifter or support, K, or its equivalent, constructed to operate in compelling the said moving mechanism to sustain the weight of the carbon-holder after its carbon is sufficiently consumed or removed, substantially as and for the purpose described.

In testimony whereof, I have signed my name to this specification in the presence of two subscribing witnesses.

CHARLES F. BRUSH.

Witnesses :

LEVERETT L. LEGGETT,

JNO. CROWELL, Jr.

57½ (Endorsed): Bill of Complaint and copies of Exhibits, filed January 20, 1891.

L. S. B. SAWYER, *Clerk.*

58 In the Circuit Court of the United States in and for the Ninth Circuit and Northern District of California.

THE BRUSH ELECTRIC COMPANY,
THE CALIFORNIA ELECTRIC LIGHT COMPANY, and the SAN JOSE LIGHT AND POWER COMPANY,
Complainants,
vs.
THE ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE,
Defendant.

Whereas, the complainants, the Brush Electric Company, the California Electric Light Company and the San Jose Light and Power Company, have commenced a suit in the above entitled cause against the above named defendant, and have applied for a temporary restraining order in said suit against the said defendant, enjoining and restraining it from the commission of certain acts as in the Bill of Complaint filed in the said suit is more particularly set forth and described.

Now, therefore, we, the undersigned, Alvinza Hayward and P. B. Cornwall, in consideration of the premises, and of the issuance of said temporary restraining order, do jointly and severally undertake in the sum of ten thousand dollars, lawful money of the United States of America, and promise to the effect that in case said temporary restraining order shall issue the said complainants, the Brush Electric Company, the California Electric Light Company, and the San Jose Light and Power Company, will pay to the Electric Improvement Company of San Jose, defendant, such damages not exceeding the sum
59 of ten thousand dollars, lawful money of the United States of America, as the said defendant may sustain by reason of the said restraining order, if the said Circuit Court finally decides that the said complainants were not entitled thereto.

ALVINZA HAYWARD,
P. B. CORNWALL.

State of California, City and County of San Francisco, Northern District of California, *ss.*

Alvinza Hayward and P. B. Cornwall, the persons named in and who subscribed the foregoing undertaking, as the sureties thereto, being severally duly sworn, each for himself, says :

That he is a resident and freeholder within the State, and is worth the sum specified in the said undertaking, as the penalty thereof, over and above all his just debts and liabilities, exclusive of property exempt from execution.

ALVINZA HAYWARD,
P. B. CORNWALL.

Subscribed and sworn to before me this 20th day of January, 1891.

F. D. MONCKTON,
Commissioner U. S. Circuit Court, Northern District of California.

(Endorsed): Form of bond and sufficiency of sureties. Approved this 20th day of January, 1891.

HAWLEY, *Judge.*

Filed January 20th, 1891.

L. S. B. SAWYER, *Clerk.*
By F. D. MONCKTON, *Deputy Clerk.*

60 In the Circuit Court of the United States in and for the Ninth Circuit and Northern District of California.

THE BRUSH ELECTRIC COMPANY,
THE CALIFORNIA ELECTRIC LIGHT COMPANY, and the
SAN JOSE LIGHT AND POWER COMPANY,
Complainants,
vs.
THE ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE,
Defendant.

United States of America, Northern District of California, City and County of San Francisco, ss.

Nathaniel S. Keith, being first duly sworn, deposes and says: That his name is Nathaniel S. Keith; that he is fifty-two years of age, and resides in the city and county of San Francisco.

That he is an electrical engineer by profession, and has been continually engaged in such occupation for the last past nineteen years as inventor and patentee of electrical apparatus, editor and writer upon electrical and kindred subjects, and as expert in electrical and chemical patent cases.

That he is familiar with the patent granted to Charles F. Brush on the second day of September, 1879, and numbered 219,208, and with the lamps made by the Brush Electric Company of Cleveland, Ohio, under said patent.

That he is also familiar with the double carbon lamp known as the Wood lamp. That his familiarity with this lamp
61 extends from the time of the manufacture of the first lamp up to the present time.

That he has recently examined one of these said Wood double carbon electric lamps, such as are used in the city of San Jose by the defendant, and finds that it embodies in its construction and operation the following combination:

Mechanism which separates the pairs of carbons dissimultaneously or successively. And, furthermore, mechanism which

not only separates the pairs of carbons dissimultaneously or successively, to establish the arc, but also maintains one of the pairs of carbons in a separated relation until the other pair is consumed.

And in addition to these functions just described, its mechanism further causes the feeding of the carbons so that one pair is combusted before the other pair, the members of which pair during the time of combustion are maintained in a separated relation.

In addition to the functions previously described, the mechanism acts as a lifter to separate the carbons dissimultaneously or successively.

The mechanism also operates to sustain the weight of the carbon holder after its carbon is sufficiently consumed or removed. The mechanism of the Wood double carbon lamps used by the defendant, and which affiant examined recently as aforesaid, performs the several functions which affiant has just previously described, and that it is the opinion of affiant, after a close and critical examination of the said Brush patent described in the Bill of Complaint herein, and lamps made by the Brush Electric Company, embodying the features described in the said
62 patent, and the aforesaid Wood double carbon lamp, that the operation of the said Wood double carbon lamp is substantially the same as that which is set forth and claimed in the said Brush patent described in the Bill of Complaint, and that the several claims of said Brush patent No. 219,208 describe the precise operation of the said Wood lamp, and that the mechanism of the said Wood lamp is an exact equivalent of the mechanism described and set forth in the claims of the aforesaid Brush patent described in the Bill of Complaint herein

N. S. KEITH.

Subscribed and sworn to before me this 16th day of January, 1891.

[SEAL.] GEO. T. KNOX,

Notary Public in and for the City and County of San Francisco, State of California.

(Endorsed): Filed January 20th, 1891.

L. S. B. SAWYER, *Clerk.*

By F. D. MONCKTON, *Deputy Clerk.*

63 In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

THE BRUSH ELECTRIC COMPANY,
THE CALIFORNIA ELECTRIC LIGHT COMPANY, and the SAN JOSE LIGHT AND POWER COMPANY,
Complainants,
vs.
THE ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE,
Defendant.

To the above named complainants, and Messrs. Estee, Wilson & McCutchen, Solicitors for Complainants:

Please take notice that on Thursday, the 22d day of January, 1891, at the hour of ten o'clock A. M., I shall, for and on behalf of the defendant above named, apply before the Honorable Thomas P. Hawley, at his chambers in the United States Appraiser's Building, in the City and County of San Francisco, State of California, for an order modifying the temporary restraining order heretofore, on the 20th day of January, 1891, issued in said suit.

LOUIS T. HAGGIN.

(Endorsed): Received copy of the within notice this 21st day of January, A. D. 1891.

ESTEE, WILSON & McCUTCHEN,
Attorneys for Complainants.

Filed January 22, 1891.

L. S. B. SAWYER, *Clerk.*
By F. D. MONCKTON, *Deputy Clerk.*

64 United States of America—Circuit Court of the United States, Ninth Circuit, Northern District of California.

IN EQUITY.

The President of the United States of America, Greeting, to the Electric Improvement Company of San Jose:

You are hereby commanded, that you be and appear in said Circuit Court of the United States aforesaid, at the court room in San Francisco, on the second day of March, A. D. 1891, to answer a bill of complaint exhibited against you in said Court by the Brush Electric Company, a corporation duly organized and existing under the laws of the State of Ohio, the California Electric Light Company, a corporation duly organized and existing under the laws of the State of California, and the San Jose Light and Power Company, a corporation duly organized and existing under the laws of the State of California, and

to do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 20th day of January, in the year of our Lord one thousand eight hundred and ninety-one, and of our Independence the 115th.

[SEAL.] L. S. B. SAWYER, *Clerk.*

65 Memorandum pursuant to Rule 12, Supreme Court U. S.

You are hereby required to enter your appearance in the above suit, on or before the first Monday of March next, at the Clerk's Office of said Court. pursuant to said Bill ; otherwise the said Bill will be taken *pro confesso.*

L. S. B. SAWYER, *Clerk.*

(Endorsed) : UNITED STATES MARSHAL'S OFFICE,
Northern District of California.

I hereby certify, that I received the within writ on the 20th day of January 1891, and personally served the same on the 20th day of January 1891, on the Electric Improvement Company of San Jose, by delivering to and leaving with A. J. Bowie, President of said the Electric Improvement Company of San Jose, said defendant named therein, personally, at the City and County of San Francisco, in said District, an attested copy thereof, together with a copy of the Bill of Complaint.

W. G. LONG, *U. S. Marshal.*

San Francisco, January 20th, 1891.

UNITED STATES MARSHAL'S OFFICE,
Northern District of California.

I hereby certify, that I received the within writ on the 20th day of January 1891, and personally served the same on the 23d day of January 1891, on the Electric Improvement Company of San Jose, by delivering to and leaving with Harry J. Edwards, Secretary of said the Electric Improvemnet Company of San Jose, aid defendant named therein, personally, at the County of Santa Clara, in said District, an attested copy thereof.

W. G. LONG, *U. S. Marshal.*

San Francisco, January 26, 1891.

Filed January 27th, 1891.

L. S. B. SAWYER, *Clerk.*
By F. D. MONCKTON, *Deputy Clerk.*

66 In the Circuit Court of the United States in and for the Ninth Circuit and Northern District of California.

THE BRUSH ELECTRIC COMPANY,
THE CALIFORNIA ELECTRIC LIGHT COMPANY, and the SAN JOSE LIGHT AND POWER COMPANY,
Complainants,

vs.

THE ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE,
Defendant.

Upon order of the Court, after reading and filing the Bill of Complaint herein and the affidavit of Nathaniel S. Keith, and on motion of Messrs. Estee, Wilson & McCutchen, Solicitors for Complainants :

It is hereby ordered that the defendant show cause, if any it has, before the Judge of said Court, at the court room of said Court, in the City and County of San Francisco, in the said Northern District of California, on Monday, the second day of February, 1891, at 11 o'clock in the morning of said day, or so soon thereafter as counsel can be heard, why an injunction should not issue pursuant to the prayer of said bill.

And it is further ordered that in the meanwhile, and until the further order of this Court, defendant, together with its offieers, successors or assigns, agents, attorneys and employes, be and they are hereby enjoined and restrained from making, using, selling or vending any electric arc lamps in which two or more carbons are independently adjusted and regulated by one and the same regulating mechanism, and are separated and burned successively to secure a continuous burning of one pair of
67 carbons prior to the establishment of the arc between the other pair.

And also from making, using, selling or vending any arc electric lamps containing two or more pairs or sets of carbons, in combination with mechanism constructed to separate said pairs dissimultaneously or successively, and establish the electric light between the members of but one pair (to wit, the last pair separated), while the members of the remaining pair or pairs are maintained in a separated relation.

Also, from making, using, selling or vending electric arc lamps having more than one pair or set of carbons, the combination with said carbons, sets or pairs of mechanism constructed to impart to them independent and dissimultaneous separating and feeding movements, whereby the electric light is established between the members of but one of said pairs or sets at a time, while the members of the remaining pair or pairs are maintained in a separated relation.

Also, from making, using, selling or vending any arc electric

lamps with two or more pairs or sets of carbons, all placed in circuit, so that when their members are in contact the current may pass freely through all said pairs alike, in combination with mechanism constructed to separate said pairs dissimultaneously or successively.

This order to issue upon the filing and approval of bond by complainants in the sum of ten thousand dollars.

Dated, January 20, 1891.

THOMAS P. HAWLEY, *Judge.*

(Endorsed): UNITED STATES MARSHAL'S OFFICE,
Northern District of California.

I hereby certify that I received the within writ on the
68 20th day of January, 1891, and personally served the same on the 20th day of January, 1891, on the Electric Improvement Company of San Jose, by delivering to and leaving with A. J. Bowie, President of said the Electric Improvement Company of San Jose, said defendant named therein, personally, at the City and County of San Francisco, in said district, a certified copy thereof, together with a certified copy of affidavit of N. S. Keith.

W. G. LONG, *U. S. Marshal.*

San Francisco, January 20, 1891.

UNITED STATES MARSHAL'S OFFICE,
Northern District of California.

I hereby certify that I received the within writ on the 20th day of January, 1891, and personally served the same on the 23d day of January, 1891, on the Electric Improvement Company of San Jose, by delivering to and leaving with Harry J. Edwards, Secretary of said the Electric Improvement Company of San Jose, said defendant named therein, personally, at the County of Santa Clara, in said district, a certified copy thereof.

W. G. LONG, *U. S. Marshal.*

San Francisco, January 26, 1891.

Filed January 27, 1891.

L. S. B. SAWYER, *Clerk.*
By F. D. MONCKTON, *Deputy Clerk.*

69 At a stated term, to wit, the February term, A. D. 1891, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the Court room in the City and County of San Francisco, on Saturday, the 14th day of February, in the year of our Lord one thousand eight hundred and ninety-one.

Present: The Honorable THOMAS P. HAWLEY, *United States District Judge*, District of Nevada.

BRUSH ELECTRIC COMPANY ET AL.
vs.
ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE. } No. 11,205.

Now, on this day comes one of the plaintiffs, the Brush Electric Company, by W. S. Wood, its solicitor, and moves the Court to dismiss this suit so far as said plaintiff is concerned, which motion is now opposed by the California Electric Light Company, a plaintiff, who appears by M. M. Estee, Esq., its solicitor, and it is agreed that said motion be set down for hearing before the Court, on the 23rd day of March, 1891, and that formal notice thereof be and the same is hereby waived; also agreed that the complainant, California Electric Light Company, may file and serve such affidavits and other documentary evidence in opposition to said motion as it may be advised, on or before March 9, 1891, and that complainant, Brush Electric
70 Light Company, may file and serve such affidavits and documentary evidence in answer thereto as it may be advised, on or before March 21, 1891.

71 In the Circuit Court of the United States, in and for the Ninth Circuit and Northern District of California.

BRUSH ELECTRIC COMPANY,
CALIFORNIA ELECTRIC LIGHT COMPANY, and the
SAN JOSE LIGHT AND POWER COMPANY,
Complainants,
vs.
ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE,
Defendant. } In Equity. No. 11,205.

State of California, City and County of San Francisco, *ss.*

George H. Roe, being first duly sworn, deposes and says:

That he is a citizen of the United States and a resident of the City and County of San Francisco, State of California, and is of the age of thirty-eight years.

That he is the Secretary and acting general manager of the California Electric Light Company, and that he has been such Secretary and acting general manager since the organization of that Company, to wit, since the 30th day of June, 1879. That he is thoroughly familiar with the business of said Company, its character and extent.

That on the 18th day of October, 1875, there was incorporated in the State of Ohio, a corporation known as the Telegraph

Supply Company, for the purpose of engaging in and carrying on a general manufacturing business, and the business of manufacturing telegraph supplies and all other work legally connected therewith, with its principal place of business in
72 the City of Cleveland, in said State. That said corporation sent an agent to the Pacific Coast for the purpose of making sale of its goods, and also for the purpose of making sale of the right to manufacture, use and sell the patented articles then made by it.

That Mr. William Kerr, the immediate assignor of the California Electric Light Company, one of these complainants, did on the 10th day of August, 1876, purchase of the Telegraph Supply Company, above named, the right to manufacture, use and sell the inventions described and claimed in Letters Patent No. 154,924 in the States of California, Oregon, Nevada and the Territory of Washington, for the full end of the term for which said patent was granted, as fully as said Telegraph Supply Company had before the signing of such instrument.

(See Exhibit "A" attached hereto and made a part of this affidavit.)

That said assignment was made in consideration of the sum of five thousand dollars gold coin, paid by the said William Kerr to the said Telegraph Supply Company.

That on the same day, to wit, on the 10th day of August, 1876, the said Telegraph Supply Company sold, assigned, and conveyed to William Kerr, the party above referred to, in consideration of the sum of five thousand dollars, the right to exclusively use the devices described and patented in U. S. Patent No. 130,941, dated August 27th, 1872, re-issue No. 6,579 (date of re-issue August 3d, 1875), and also all improvements which might thereafter be made upon the devices or inventions above described for the States of California, Nevada, Oregon and the Territory of Washington.

(Said assignment is attached hereto marked Exhibit "B," and made a part of this affidavit.)

73 That on the same day, to wit, on the 10th day of August, 1876, the said Telegraph Supply Company in consideration of the sum of five thousand dollars, granted, conveyed and assigned to the said William Kerr, and assigns, the right to manufacture, sell and use within the States of California, Nevada, Oregon and the Territory of Washington, the devices patented by United States Patent No. 139,826, dated June 10th, 1873, and re-issued August 3d, 1875, number of re-issue being 6,581, which assignment is attached hereto, marked Exhibit "C" and made a part of this affidavit. That during the year 1877, Mr. Charles F. Brush perfected his electric light apparatus, which is covered by the patents sued on herein, to an extent that ren-

dered its manufacture profitable, and entered into an agreement with the Telegraph Supply Company conveying to that company and its assigns, the exclusive right to manufacture, use and sell the said electric light apparatus throughout the United States and the territories thereof, and after issuance of the patent sued on, Brush conveyed the said patent and all interest therein to the Brush Electric Company, a corporation, to which name the said Telegraph Supply Company has changed its name as hereinafter alleged. That the assignment of the patents from the Telegraph Supply Company to Wm. Kerr hereinbefore mentioned was an assignment of all patented inventions owned or controlled by the said Telegraph Supply Company pertaining to electrical matters; also, of any and all patents of which it might become possessed, as shown in a certain letter from the Telegraph Supply Company dated Cleveland Ohio, Feb. 2d, 1878, addressed to the San Francisco Telegraph Supply Company, the name under which Wm. Kerr conducted his business; a copy of which letter is hereto attached marked Exhibit "E," and made a part hereof.

74 That on the 30th day of June, 1879, the California Electric Light Company was incorporated in the State of California, with headquarters at San Francisco, with a capital stock of 50,000 shares, par value $100 per share. That it was incorporated for the purpose of engaging in the electric lighting business.

That after negotiations covering about two months, the California Electric Light Company purchased of Wm. Kerr all of the interest of every kind and character that he had acquired by reason of the several agreements and assignments above referred to, of the Telegraph Supply Company; also, all the Brush dynamo electric machines, lamps, and similar apparatus that he had procured from the Telegraph Supply Company, under said agreements and assignments, and especially all of the exclusive rights to the Brush apparatus so acquired by him. But as some of these agreements and assignments made between Wm. Kerr and the Telegraph Supply Company were deemed informal, a new agreement was made between him and the said Telegraph Supply Company, dated the 2d day of August, 1879, which agreement recited that on the 2d day of August, 1876, and on the 10th day of August, 1876, the party of the first part therein (The Telegraph Supply Company) by instruments in writing, bearing those respective dates, did grant to the party of the second part therein (Wm. Kerr) and his assigns, the exclusive right to manufacture, sell and use the inventions described in certain Letters Patent, numbered respectively No. 139,826 and 154,924, throughout the States of California, Nevada, Oregon and Washington Territory, being two of the patents hereinbefore referred to.

And it was further recited therein, that the said party of the first part (The Telegraph Supply Company) did thereby
75 give and grant unto the party of the second part (Wm Kerr) the exclusive right throughout the States of California, Nevada and Oregon, and Washington Territory, to use and sell, but not to manufacture any and all inventions and devices under any and all patents which it might become possessed of, pertaining to dynamo electric machines, lights, lamps, carbons and similar apparatus, for the full end of the term of such patents and all extensions and re-issues thereof. That a copy of said agreement is attached hereto marked Exhibit "F," and made a part hereof.

That afterwards, on the 21st day of August, 1879, Wm Kerr assigned to the California Electric Light Company, all of his right, title and interest in and to the last named and all other agreements made between him and the Telegraph Supply Company. This assignment was sent to the Telegraph Supply Company, who ratified and approved the same; which assignment and ratification more fully appear in Exhibits "G" and H" attached to this affidavit and made part thereof.

That in October, 1879, the California Electric Light Company erected in San Francisco a large and expensive structure, known as a Central Electric Station, and commenced the distribution of electric lights throughout the City of San Francisco, from that station.

This, as far as this affiant is able to learn, was the first Central Electric Station built in the world. That is, the first structure wherein electricity was distributed throughout a large area for the purpose of lighting that area.

That electric lights had been in use before, but never in this manner, nor to this extent. This structure and station has since been enlarged and increased until the California Electric Light Company has invested in San Francisco, in this business
76 alone, $892,531.31, and this business is confined exclusively to electric lighting under and pursuant to the patents above referred to, the right to the use of which comes from the Brush Electric Company to the California Electric Light Company.

That since the incorporation of the California Elecric Light Company, the said Company has paid to the Brush Electric Company, for electrical apparatus purchased from it, under the license and contract above referred to, the sum of six hundred and eighty three thousand seven hundred and forty-one dollars ($683,741).

The California Electric Light Company has pushed the business everywhere within the four States of the Pacific Coast where it holds such exclusive license.

It has purchased from the Brush Electric Company electric light apparatus having a capacity of 7,778 arc electric lamps, and 7,716 incandescent lamps, as will more fully appear by a list or exhibit hereto attached, made a part of this affidavit and marked Exhibit "I."

The California Electric Light Company is still engaged in extending its business, and from time to time is ordering goods from the Brush Electric Company, and it is accepting and filling those orders. That it has now two salesmen engaged at a large salary traveling throughout the four States in which it has the exclusive license, and is expending large sums of money in advertising and in traveling and other expenses in its endeavor to push forward the introduction of the use of the Brush Electric Light apparatus.

As late as the 22d of January, 1891, an order was made by the California Electric Light Company upon the Brush Electric Company for $1,730 worth of electrical goods, which order
77 was filled; and, again, on the 12th day of February, 1891, the California Electric Light Company made an order on the Brush Electric Company for an amount of goods exceeding $1,900 in value, which goods were shipped by the Brush Electric Company to the California Electric Light Company, on the 20th day of February, 1891.

In addition to the investments above referred to, the California Electric Light Company has caused to be invested large sums of money, the exact amount of which this affiant is unable to state, in Brush electric lighting apparatus, in the cities of San Jose, Sacramento, Marysville, Santa Cruz, Oakland, San Rafael, Haywards, Red Bluff, Eureka, Truckee, Bakersfield, Los Angeles, and San Diego, in the State of California; and in the cities of Portland and Oregon City in the State of Oregon; and in the cities of Vancouver, Aberdeen and New Whatcom in the State of Washington, and in Virginia City and Carson City in the State of Nevada; and in many other towns and cities in the territory named in said contract.

And in addition to the electric lighting plants that the California Electric Light Company has caused to be installed it has sold large quantities of Brush electric lighting apparatus to manufacturies, mills, mines and other places for private use throughout its territory.

That in the City of San Jose, State of California, there has been invested by and through the influence of the California Electric Light Company, in an electric lighting plant, for the use of the devices referred to in the agreement between the California Electric Light Company and the Brush Electric Company, the sum of over one hundred thousand dollars.

That after this investment was made, the Electric Improve-

ment Company of San Jose, the respondent in this action,
78 erected its plant in the City of San Jose, and commenced furnishing lights from a central station in said city. That it secured from the city a contract for lighting the streets of said city for five years, amounting in the aggregate to the sum of seventy-two thousand ($72,000) dollars, and that it used for that and all other purposes of street lighting the so-called Wood double-carbon lamp, which has been held by the Court, and which is an infringement upon the so-called Brush double carbon lamp; which acts of infringement have been and are a serious and irreparable injury to the business of the company now acting under the authorization of the California Electric Light Company, and which used the inventions and devices patented by said Charles F. Brush, and afterwards assigned to the Brush Electric Company, and the complainant, The California Electric Light Company.

This affiant further states that on the 21st day of June, 1880, the Telegraph Supply Company, the corporation that entered into the agreement with William Kerr, the assignor of the California Electric Light Company, made application in the Court of Common Pleas, of the County of Cuyahoga, State of Ohio, to change its name to that of the Brush Electric Company, and it did, on that date, file a certain petition asking that its name might be so changed to the Brush Electric Company, which petition was ouly granted, and since then the name and style of the said corporation has been the Brush Electric Company.

(See Exhibit "J," the same being a copy of the original certificate of incorporation of the Telegraph Supply Company and decree changing the name of the Telegraph Supply Company to that of the Brush Electric Company, attached hereto and made a part hereof.)

79 This affiant further states that that the Thompson-Houston Electric Company of Boston, Massachusetts, is a corporation, whose principal place of business is in the State of Massachusetts.

That for many years it has been the most active competitor of the Brush Electric Company for the sale of electric lighting apparatus.

That the two systems—viz., the Brush electric system and the Thompson-Houston system—have been recognized everywhere throughout the country as the leading systems for arc electric lighting.

That especially within the territory for which the California Electric Light Company holds an exclusive privilege—viz., the States of California, Nevada, Oregon and Washington—the said Thompson-Houston Electric Company has pushed its business to the farthest possible extent, in competition with the California

Electric Light Company and the so-called Brush electric apparatus.

That on or about the first day of January, 1891, the officers and members of the Thompson-Houston Electric Company purchased a majority of the entire capital stock of the Brush Electric Company, and that after said purchase, at a meeting of the stockholders of the Brush Electric Company held at the City of Cleveland, State of Ohio, in the month of January, 1891, the Thompson-Houston Electric Company and the officers and stockholders of said company, having so completed the purchase of the capital stock of the Brush Electric Company, and being the owners of that stock, held a stockholders' meeting, representing substantially all of the stock of the Brush Electric Company, at which meeting the old officers of the Brush Electric Com-
80 pany were retired and a new Board of Directors was elected, all of whom were elected by and are now under the control of the Thompson-Houston Electric Company. That of the seven directors so elected, three were and are directors of the Thompson-Houston Electric Company, to wit: Silas A. Barton, John S. Bartlett and Charles A. Coffin.

That the latter is at present and for a long time has been the active executive officer in control of the business of the said Thompson-Houston Electric Company.

That Mr. Silas A. Barton, one of the new Directors, was the former manager of the Thompson-Houston Electric Company, and was, at a meeting of the Directors of the Brush Electric Company, so held in Cleveland, Ohio, in January, 1891, elected President of the Brush Electric Company; and at this time he holds the dual position of President of the said Brush Electric Company and Director and one of the leading members of the Thompson-Houston Electric Company.

That the said Barton, the present President of the Brush Electric Company, is the same Barton who signed the telegram first presented by Mr. Wood, attorney-at-law, San Francisco, to this Court, which telegram requested the said Wood to have the said cause dismissed, so far as it related to the Brush Electric Company.

This affiant further states that the said Thompson-Houston Electric Company, its stockholders and members, are the present owners of the stock of, and that they direct and control, the Fort Wayne Electric Company.

That the last named company is a corporation existing in the State of Indiana; that its principal place of business is at Fort Wayne, in said State, and that it is engaged in the manu-
81 facture of electric lighting apparatus, and is, through its agent, the Electric Improvement Company of San Francisco, an active competitor of the California Electric Light Com-

pany for the sale of electric light apparatus upon the Pacific Coast.

That the Fort Wayne Electric Company, as this affiant is informed and believes, is the owner of a large portion of the capital stock of the Electric Improvement Company of San Francisco.

That the Wood and infringing patent which is in contest in this action, and the use of which has been restrained by the order of this Court, is nominally the property of the Fort Wayne Electric Company, but is in fact the property of the Thompson-Houston Electric Company, by reason of the ownership by the last named company of the capital stock of the Fort Wayne Electric Company.

The said Fort Wayne Electric Company has practically no independent existence; that is to say, it is a corporation in name only. Its capital stock is owned, its business policy is dictated, and its officers and agents are controlled by the Thompson-Houston Electric Company.

That the Thompson-Houston Electric Company is endeavoring to secure control of all the leading electric lighting companies of the United States, and has in fact secured the control of a very large number of such corporations, including the Brush Electric Company, the Fort Wayne Electric Company, and many others.

That, as affiant is informed and believes, it is the purpose of the said Thompson-Houston Electric Company to acquire a complete monopoly of the business of electric lighting in the United States, and to detroy or absorb all other individuals or
82 corporations engaged in that business, including the California Electric Light Company, regardless of their rights; and to accomplish its purpose it has from time to time increased its capital stock until the same amounts to the sum of fifteen million dollars.

That on the third day of July, 1890, at the request of the California Electric Light Company, the Brush Electric Company joined in bringing an action in the Circuit Court of the United States for the Ninth Circuit, and Northern District of California, which action is entitled, "Brush Electric Company and California Electric Light Company *vs.* Electric Improvement Company;" that the said Brush Electric Company prepared and sent out, through its attorneys, officers and agents, the Bill of Complaint, duly signed by its President, to be filed in said action.

That by its direction, and at its request, its own attorney, Dr. L. L. Leggett, was employed to visit California, and to aid in the prosecution of said suit, and that his services were paid for by the California Electric Light Company.

That the Brush Electric Company was fully informed of and consented to the litigation in California, including this action.

That a preliminary injunction was obtained against the said Electric Improvement Company, enjoining said Company from the use of the so-called Wood double lamp.

That afterwards, and after a full hearing and argument by the council representing complainants and respondent, and after the presentation of affividavits and other proofs to the Court, the Court made said injunction permanent *pendente lite*, and that the said injunction is now in full force and effect.

That the Electric Improvement Company, respondent in
83 said last named action, has its license and authority for the use of the so-called Wood lamp, from the Fort Wayne Electric Company.

That the Electric Improvement Company of San Jose, the respondent in this action, is actually a branch of the Electric Improvement Company of San Francisco, and that the Electric Improvement Company in San Francisco owns 3,750 shares out of a total capital stock of 5,000 shares of the Electric Improvement Company of San Jose.

That the Electric Improvement Company of San Francisco, the defendant in the action first named, actually controls the Electric Improvement Company of San Jose, the respondent in this action, and that the manager of the Electric Improvement Company of San Francisco, viz., A. J. Bowie, is the President of the Electric Improvement Company of San Jose, the respondent in this action; and that thus the President of the Electric Improvement Company of San Jose is an officer of the Electric Improvement Company of San Francisco.

That the Wood arc lamps so called, involved in the litigation in the case of the Brush Electric Company and the California Electric Light Company *vs.* the Electrical Improvement Company of San Francisco, is the identical lamp involved in the litigation in this action; and that the parties controlling the corporation respondent in this action are the identical parties who control the respondent in the action of the Brush Electric Company and the California Electric Light Company *vs.* the Electric Company of San Francisco.

And this affiant further states that the Electric Improvement Company of San Francisco, respondent in the action of the Brush Electric Company and the California Electric Light
84 Company *vs.* the Electric Improvement Company, which is pending in this Court, is not only interested by being the controlling stockholder of the Electric Improvement Company of San Jose, but the said Electric Improvement Company of San Francisco supplies the Electric Improvement Company of San Jose with all its electrical and other goods, including the so-called Wood lamp, the use of which has been enjoined in this Court in the said action of the Brush Electric Company and the

California Electric Light Company *vs.* the Electric Improvement Company of San Francisco.

This affiant further states that the California Electric Light Company, by reason of the fact that it holds the exclusive license to use and sell the Brush electric apparatus in the States of California, Nevada, Oregon and Washington, and from the further fact that it has expended vast sums of money in the building up and maintaining said business; and from the further fact that it has established an extensive demand for the electrical goods controlled by it, in the said four States above named, it has become, and is most largely interested in the carrying on of the said business, and it is one of the real parties in interest in this action.

That there has always been an understanding and agreement between the Brush Electric Company and the California Electric Light Company, that all infringers on this coast should be actively and earnestly prosecuted by both the Brush Electric Company and the California Electric Light Company, and that they should join in all actions for infringement of the said Brush electric devices, and in and out of Court oppose all infringers of the Brush Electric Compauy's devices.

85 And that such understanding and agreement was by the Brush Electric Company recognized and fulfilled up to the time of the election of its new directors in the month of January, 1891, hereinbefore referred to.

That the California Electric Light Company at the special instance and request of the Brush Electric Company employed its special counsel, Dr. L. L. Leggett, who is the leading attorney of the Brush Electric Company at Cleveland, Ohio, in the case of the Brush Electric Company and the California Electric Light Company *vs.* the Electric Improvement Company, and in all other litigation that they or either of them were to have on this coast.

That the said California Electric Light Company, at the request of the former President and officers of the Brush Electric Company, paid the said Leggett a large sum of money for his legal assistance in the prosecution of infringers upon the Brush patents within the States and Territories licensed by the California Electric Light Company.

That at the former hearing of the Brush Electric Company and California Electric Light Company's case against the said Electric Improvement Company, the said Leggett visited San Francisco, and took an active part in the argument of said case in this Court, and filed a brief therein ; and was then consulted about this case and knew all the facts in relation thereto. That Exhibits " K " 1 to 27 inclusive, which are attached hereto and made a part of this affidavit, are copies of letters and telegrams exchanged between the Brush Electric Company and the California Electric Light Company, one of these complainants.

One of said letters, Exhibit No. 10, is from J. Potter, who was at that time the Treasurer of the Brush Electric Company and one of its active executive officers, and which said letter
86 is dated Cleveland, Ohio, April 18th, 1890, explaining in part the position of the Brush Electric Company in relation to this litigation. Another of said letters, Exhibit No. 15, is dated Cleveland, Ohio, June 23d, 1890, and is from G. W. Stockly, then President of the said Brush Electric Company, and its active executive officer, giving instructions relative to this litigation, consenting thereto, and advising thereabout.

The others are copies of letters and telegrams exchanged between the Brush Electric Company and the California Electric Light Company, showing that there has always been an understanding and agreement between the Brush Electric Company and the California Electric Light Company, that all infringers on this coast should be actively prosecuted by the California Electric Light Company and that the Brush Eleetric Company would join in all such actions for infringement of the Brush patents.

The gentlemen referred to in the correspondence, Dr. L. L. Leggett and Mr. H. A. Seymour, were and are regularly employed attorneys of the Brush Electric Company in their patent cases.

That it is a fact that the Wood lamp which has been hitherto successfully contested by the Brush Electric Company in four of the Eastern Circuit Courts and also in this Court, and which has been shown to be an infringement of the Brush double arc electric lamp, is the identical lamp now in use by the respondent, and that the respondent is only the agent and servant of the respondent in the case of the Brush Electric Company and the California Electric Light Company *vs.* the Electric Improvement Company of San Francisco.

GEO. H. ROE.

Subscribed and sworn to before me this 9th day of March, 1891.

87 [SEAL.] GEO. T. KNOX,

Notary Public in and for the City and County of San Francisco, State of California.

88 EXHIBIT A.

Whereas, letters patent of the United States for improvements in electric annunciators, No. 154,924, dated September 8, 1874, was granted to A. Stover and J. Lenox, of Cleveland, County of Cuyahoga and State of Ohio,

And whereas, by mesne assignment the Telegraph Supply Company, a corporation duly incorporated under and by virtue

of the laws of the State of Ohio, has become and is now the owner of a one-fourth (¼) and undivided interest in said letters patent and the invention therein described, within and throughout the whole of the United States,

And whereas, Wm. Kerr is desirous of having the right to the use of the said patent in the States of California, Nevada and Oregon, and Washington Territory,

Now, for the consideration of five thousand dollars, the receipt whereof is hereby acknowledged, the said Telegraph Supply Company does hereby grant and convey to said Wm. Kerr and assigns the right to manufacture, sell and use the invention described and claimed in said letters patent in said States of California, Nevada and Oregon, and Washington Territory, to the full end of the term for which said patent was granted, as fully as said Telegraph Supply Company had before the signing of this instrument.

It is also understood and agreed that this license shall include all reissues and extensions of said letters patent, and excludes said Telegraph Supply Company from making, selling or using the invention described in said letters patent within said States and Territory. It is also further understood and agreed that this license shall cover and include any and all improvements upon the invention described in said letters patent of which the said Telegraph Supply Company may become possessed
89 during the term of said letters patent.

And said Telegraph Supply Company covenants to and with said Wm. Kerr, his heirs and assigns, that said Telegraph Supply Company has full right to grant a license to make, sell and use said invention, as described in and secured by said letters patent, in manner and form as above written, and that the interest hereinbeiore conveyed is free from all prior assignments, mortgage, lien or other incumbrance whatever.

In witness whereof, we have hereunto set our hands and seals, as of and for the 10th day of August, A. D. 1876.

TELEGRAPH SUPPLY COMPANY.

M. D. LEGGETT, *President*,

[SEAL.] W. H. LAWRENCE, *Secretary*.

90 EXHIBIT B.

This agreement, made this 10th day of August, 1876, by and between the Telegraph Supply Company, a corporation duly incorporated under and by virtue of the laws of the State of Ohio, party of the first part, and Mr. Kerr, party of the second part, witnesseth :

That whereas, said party of the first part is the owner of certain interests in certain patent rights, and has the right to use

and employ the same within the territory hereinafter stated, and the party of the second part desires to be licensed and permitted to use and employ the same within said territory;

Now, in consideration of the sum of five thousand dollars, to be paid to the party of the first part, as herein stated, the party of the first part hereby licenses, gives and permits the said party of the second part, his heirs and assigns, the right to exclusively use and employ said patent rights within the States of Oregon, Nevada and California, and the Territory of Washington, from this date henceforth.

Said patent and patent rights are described as follows: Improvement in electric signaling apparatus for railways, patent No. 130,941, dated August 27th, 1872; reissue No. 6,579, dated August 3d, 1875; application for reissue filed July 25th, 1875.

And also improvements which may be made upon the devices described in said letters patent, which may be made or owned at any time by the party of the first part, or for its use, and also all renewals thereof.

The interests of said party of the first part under the said letters patent consist in the exclusive right in the whole of
91 the United States and its territories, to the use of said letters patent in making, selling and using the entire invention therein described, except in its application for the purpose of indicating the movement of railway trains, switches, draw bridges and other railway apparatus. It is the exclusive right to this interest in the States and Territories named, which is intended by this instrument to be conveyed from said party of the first part to said party of the second part. The said party of the second part shall, within said territory, hereafter have the exclusive right to make, vend, and use all apparatus, machines and appliances necessary and proper to use said patent rights, the same as the party of the first part has or may have during the term of said letters patent.

The said sum of five thousand dollars ($5,000) shall be paid as follows, viz.:

Five promissory notes of ($1,000) one thousand dollars each, shall be given by the party of the second part at this date, payable to the party of the first part, or bearer, on or before the 10th day of Aug., 1877, at the banking office of Hickox & Spear in San Francisco, with interest at the rate of ten (10) per cent. per annum, all payable in gold coin of the United States.

Failure to pay said money, or any part thereof, shall operate as a revocation of the license here given, and all rights shall thereupon revert to the party of the first part.

In witness whereof, the said parties have executed these presents the day and year first above written.

TELEGRAPH SUPPLY COMPANY,
By M. D. LEGGETT, *President.*
[SEAL.] W. H. LAWRENCE, *Secretary.*

92 EXHIBIT C.

Whereas, letters patent of the United States for improvements in electric annunciators, No. 139,826, dated June 10th, A. D. 1873, re-issued August 3rd, 1875, No. 6,581, were granted to George W. Shank, of Cleveland, County of Cuyahoga, and State of Ohio,

And whereas, by mesne conveyance, the Telegraph Supply Company, a corporation duly incorporated under and by virtue of the laws of the State of Ohio, has become, and is now, the owner of the three-fourths (¾) undivided interest in said letters patent, and the invention therein described within and throughout the whole of the United States and territories thereof,

And whereas, Wm. Kerr is desirous of having the right to the use of the said patent in the States of California, Nevada, and Oregon and Washington Territory,

Now, for the consideration of five thousand dollars, the receipt whereof is hereby acknowledged, the said Telegraph Supply Company does hereby grant and convey to said Wm. Kerr, and assigns, the right to manufacture, sell and use the invention described and claimed in said letters patent in said States of California, Nevada, and Oregon and Washington Territory to the full end of the term for which said patent was granted as fully as said Telegraph Supply Company had before the signing of this instrument.

It is also understood and agreed that this license shall include all re-issues and extensions of said letters patent, and excludes said Telegraph Supply Company from making, selling or using the invention described in said letters patent within said States and Territory.

It is also further understood and agreed that this license shall
93 cover and include any and all improvements upon the invention described in said letters patent, of which said Telegraph Supply Company may become possessed during the term of said letters patent.

And said Telegraph Supply Company covenants to and with said Wm. Kerr, his heirs and assigns, that said Telegraph Company has full right to grant a license to make, sell and use said invention as described in and secured by said letters patent, in manner and form as above written. And that the interest hereinbefore conveyed is free from all prior assignments, grant, mortgage, lien, or other incumbrance whatever.

In witness whereof, we have hereto set our hands and seals as of and for the 10th day of August, A. D. 1876.

TELEGRAPH SUPPLY COMPANY,
By M. D. LEGGETT, *President.*
[SEAL.] W. H. LAWRENCE, *Secretary.*

94 EXHIBIT E.

CLEVELAND, O., Feby. 2d, 1878.

San Francisco Telegraph Supply Co., San Francisco:

Gentlemen—In reply to your inquiry we will state that we understand our contract with Wm. Kerr, made August 10th, 1876, to embrace not only the use of all patents specifically described therein, in the territory specified, but also any and all patents of which we may become possessed after the date of said contract, for improvements on any of the devices named in any of said patents or for any inventions of the same general character. In other words, our intention is that for the territory described in your contract you shall have the same right to sell any and all patented inventions owned or controlled by us pertaining to electrical matters as we should have ourselves if we had not made the contract with you. We give you the sole and exclusive right to sell any or all of our electrical manufactures in said territory, only asking you in return to accede to the following condition :

First. That all business in which we are mutually interested shall be done on your part in a prompt and thorough manner ; remittances for purchases be made in due time, and the introduction and sale of our specialties be pushed energetically in all portions of your territory.

Second. That you will not sell for nor purchase from any other company, firm or individual, any goods that are similar to ours, or in competition with ours, but shall act as our agent to the exclusion of all other parties in the same or similar business.

95 *Third.* That prices for the sale of our specialties in your territory shall not be fixed so high as to limit or restrict their sale nor lower than our usual retail prices, and that when sold by you they shall be taken care of and kept in repair without expense to us.

On our part, we agree to sell our manufactures to you at a fair trade discount from our retail prices. If there should on your part be any departure from the condition above specified, the agreement made by us upon said conditions shall not be binding upon us.

Wishing you all success in your business, we are, very truly yours,

TELEGRAPH SUPPLY CO.
By GEO. W. STOCKLY, *Vice-President.*
W. H. LAWRENCE, *Secretary.*

The above conditions are hereby accepted and agreed to.

96 EXHIBIT F.

This agreement, made and entered into this second day of August, 1879, by and between the Telegraph Supply Co., a corporation duly organized and existing under and by virtue of the laws of the State of Ohio, the party of the first part, and Wm. Kerr, of the City and County of San Francisco, State of California, party of the second part.

Whereas, the party of the first part is engaged in the City of Cleveland, State of Ohio, in the business of manufacturing and selling electrical instruments, machinery & apparatus, & is desirous of introducing its said electrical manufactures within and throughout the territory comprising the States of Nevada, California, and Oregon and Washington Territory;

And whereas, the party of the second part is desirous of engaging in the business of selling the electrical manufactures of said party of the first part in said States and Territory;

And whereas, heretofore, to wit, on the 2nd day of August, 1876, and on the 10th day of August, 1876, the party of the first part, by instrument in writing, bearing respectively those dates did grant to the party of the second part and his assigns, the exclusive right to manufacture, use and sell the inventions described in certain letters patent numbered respectively 139,826 and 154,924, throughout the said States and Territory, as well as all improvements upon said inventions, which the said party of the first part then had, or might thereafter become possessed of..

Now, therefore, in consideration of one dollar by each of the parties hereto to the other in hand paid, the receipt whereof is hereby by each acknowledged, and other good and lawful
97 considerations them thereunto moving, the said parties do hereby agree as follows:

1st.

The party of the first part does give and grant unto the party of the second part and his assigns, the exclusive right throughout the States of Nevada, California and Oregon, and Washington Territory, to use and sell, but not to manufacture any and all inventions and devices under any and all patents owned or controlled by the party of the first part, or which it may become possessed of, pertaining to dynamo-electric machines, lights, lamps, carbons and similar apparatus, for the full end of the term of such patents and all extensions and re-issues thereof.

2nd.

The party of the second part agrees not to sell or deal in any apparatus of the above mentioned character, except that sold by first party without the written consent of first party. He agrees to push forward the introduction and sale of said apparatus

with all possible diligence in his territory, and to transact his business in so doing with promptness and fidelity, putting into the business the capital demanded by its needs. He agrees not to knowingly sell any of said apparatus for use outside of his territory without consent of the first party.

The party of the second part, for himself, his administrators, executors and assigns, agrees to use his best endeavors to promote the sale and introduction of such devices as are manufactured by the party of the first part, under all the patents hereinbefore mentioned, throughout said States and Territory.

3RD.

98 The party of the first part shall fix the prices at which all machines, apparatus and appurtenances shall be sold, from which there shall be no change except authorized by them. From these prices the party of the second part shall have a uniform discount of at least twenty per cent. If this discount to other agents is increased, it shall also be increased to second party.

4TH.

The party of the first part shall deliver all machines, apparatus and appurtenances ordered by second party in good order and properly addressed on board the cars at Cleveland, Ohio, as may be directed by second party; second party agrees to accept drafts for the net amount due for said shipment, payable in sixty days from date of shipment at Cleveland, and at maturity to pay said drafts promptly. If second party prefers at any time to pay cash, an additional discount or one and one half per cent. still will be allowed.

5TH.

If at any time the financial responsibility of second party becomes so impaired that first party cannot safely transact business in said territory through him, then this contract may be annulled, provided that the question of said responsibility shall first have been passed upon and determined by arbitration in the usual manner.

6TH.

It is understood that the covenants and agreements herein contained shall extend to the heirs, executors, administrators and assigns of said party of the second part, provided they are responsible parties and are approved by first party.

In witness whereof, the said party of the first part has hereunto affixed its corporate seal and caused these presents to be signed

by its President and Secretary thereunto duly author-
99 ized, and the said party of the second part has hereunto affixed his hand and seal the day and year first above written.

TELEGRAPH SUPPLY CO.,
By M. D. LEGGETT, *President.*
WM. KERR.

Attest: G. W. STOCKLY,
V.-Pr. & Treas'r.

EXHIBIT G.

100 This assignment made this 21st day of August, 1879, by Wm. Kerr of the City and County of San Francisco, State of California, the party of the first part, and the California Electric Light Company, a corporation duly organized and existing under and by virtue of the laws of the State of California, the party of the second part, witnesseth :

Whereas, the party of the first part, on the 2d day of August, 1879, by an agreement in writing, made and entered into by and between him and the Telegraph Supply Company, a corporation, has secured from said company for himself, his heirs and assigns, the exclusive right throughout the States of Nevada, California, Oregon and Washington Territory, to use and sell any and all inventions and devices, under any and all patents owned or controlled by the said Telegraph Supply Company, or which it may become possessed of, pertaining to dynmo-electric machines, lights, lamps, carbons, and similar apparatus for the full end of the term of such patents, and all extensions and re-issues thereof.

Now, therefore, in consideration of one dollar in hand paid to the party of the first part, by the party of the second part, the receipt whereof is hereby acknowledged, and in consideration of other agreements made between the parties hereto, still existing, the said party of the first part does hereby sell, transfer, assign and set over unto the party of the second part, all his right, title and interest in and to the hereinbefore mentioned agreement, and in and to all the rights and privileges given and granted thereby to the party of the first part herein, hereby sub-
101 stituting the party of the second part to all the right and privileges given and granted by said agreement, to the same extent as the party of the first part herein might, could or would have under the same, had this assignment not been made.

In witness whereof, the party of the first part has hereunto set his hand and seal the day and year first above written.

WM. KERR, [SEAL.]

Witness—JOHN MARTIN.

EXHIBIT H.

The Telegraph Supply Company does hereby consent to the making of the above and foregoing assignment, and does hereby approve the same.

TELEGRAPH SUPPLY CO.,
By M. D. LEGGETT, *President.*

Witness—G. W. STOCKLY, *Vice-Pres. & Treas.*

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EXHIBIT I.

Certificate of Association and Incorporation of the "Telegraph Supply Company" of Cleveland, County of Cuyahoga, State of Ohio.

We, Mortimer D. Leggett, George W. Stockly, Washington H. Lawrence, James J. Tracy and Edmund B. Nicolaus, of the City of Cleveland, County of Cuyahoga, and State of Ohio, do hereby certify that we have associated ourselves together for the purpose of forming a joint stock company under and in pursuance of the Act of the Legislature of the State of Ohio, provided for the creation and regulation of incorporated companies passed February 9th, 1846, and in pursuance of the several Acts in addition, supplementary and amendatory to the said first named Act, for the purpose of engaging in and carrying on a general manufacturing business and the business of manufacturing telegraph supplies, annunciators, burglar, fire and other alarms, signals and all other work properly and legally connected therewith.

The name and style by which this corporation shall be known is the "Telegraph Supply Company."

The amount of capital stock necessary for the business of said corporation is one hundred thousand dollars.

The whole number of shares is one thousand, and the amount of each share is one hundred dollars.

The principal office of the said corporation shall be located at, and the business shall be carried on in, the City of Cleveland, County of Cuyahoga, and State of Ohio.

The annual meeting of said corporation shall be held on the first Monday in the month of November.

103 In witness whereof, we have hereunto set our hands and seals this 18th day of October, 1875.

M. D. LEGGETT, [SEAL.]
GEORGE W. STOCKLY, [SEAL.]
WASHINGTON H. LAWRENCE, [SEAL.]
JAMES J. TRACY, [SEAL.]
EDMUND N. NICOLAUS, [SEAL.]

State of Ohio, County of Cuyahoga, *ss.*

Before me, a notary public in and for the County of Cuyahoga, and State of Ohio, personally appeared the above named Mortimer D. Leggett, George W. Stockly, Washington H. Lawrence, James J. Tracy and Edmund B. Nicolaus, who acknowledged that they did sign the foregoing instrument and that the same is their free act and deed.

In witness whereof, I hereunto set my hand and seal this 18th day of October, 1875.

[SEAL.] H. T. HOWER, *Notary Public.*

State of Ohio, County of Cuyahoga, *ss.*

I, Benjamin S. Coggswell, Clerk of the Court of Common Pleas of the County of Cuyahoga, State of Ohio, do hereby certify that H. T. Hower, before whom the annexed acknowledgment was taken, was at its date a notary public in and for said County, duly authorized by the laws of Ohio, to take the said acknowledgment, and that I am well acquainted with his handwriting and believe his handwriting and signature thereto is genuine, and that the annexed instrument is executed and
104 acknowledged according to the laws of the State of Ohio.

In testimony whereof, I hereunto sign my name and affix my official seal at Cleveland, Ohio, this 18th day of Oct., 1875.

BENJAMIN S. COGGSWELL,

[SEAL.] *Clerk as aforesaid.*

105 CUYAHOGA COMMON PLEAS.

In the matter of the application of the Telegraph Supply Company for a change of corporate name. No. 17,224.

DECREE.

And now, upon the 28th day of July, A. D. 1880, came the directors of the Telegraph Supply Company, duly incorporated under the laws of Ohio, by F. K. Collins, their attorney, and their petition herein filed came on to be heard. And upon good cause shown, and proof legally made that due notice of the object and prayer of said petition has been given in the Cleveland *Herald*, a newspaper of general circulation in Cuyahoga County;

It is therefore ordered and decreed by this Court that the name of said company be, and it hereby is, changed to the Brush Electric Company, as prayed in said petition.

It is further ordered that said company pay the costs herein within five days.

I hereby certify the above to be a true and correct copy of the

entry made in this cause, upon the journal of the Court of Common Pleas of Cuyahoga County, Ohio.

Witness my signature and the seal of said Court this 18th day of August, 1880.

WILBUR F. HINMAN, *Clerk.*
[SEAL.] By M. S. HINMAN, *Deputy.*

106 United States of America, State of Ohio, office of the Secretary of State, *ss.*

I, Daniel J. Ryan, Secretary of State of the State of Ohio, and being the officer, who, under the constitution and laws of said State, is duly constituted the keeper of the records of Articles of Incorporation of all companies incorporated under the laws thereof, and the records of all papers relating to the creation of said incorporated companies, and empowered to authenticate exemplifications of the same, do hereby certify that the annexed instrument is an exemplificated copy, carefully compared by me with the original record now in my official custody, as Secretary of State, and found to be true and correct, of the Articles of Incorporation of the "Telegraph Supply Company," filed in this office on the 19th day of October, A. D. 1875, and recorded in Volume 15, page 246, and decree of Cuyahoga Common Pleas Court changing name to the "Brush Electric Company," filed in this office, on the 19th day of August, A. D. 1880, and recorded in Volume 20, page 74, of the records of Incorporations; that it is in due form and made by me as the proper officer, and that said exemplification is entitled to have full faith and credit given it in every Court and office within the United States.

In witness whereof, I have hereunto attached my official signature and the great seal of the State of Ohio, this 20th day of February, A. D. 1891.

DANIEL J. RYAN,
[SEAL.] *Secretary of State.*

107 EXHIBIT J.

List of Brush Electric Light Apparatus, installed by the California Electric Light Company up to December 31, 1890.

LIGHTING COMPANIES.

		Arc Lights.
California Electric Light Co.....	San Francisco, Cal....	2,250
Los Angeles Electric Co.....	Los Angeles, Cal.....	585
Sacramento Electric Light Co.....	Sacramento, Cal.....	165
San Jose Brush Electric Lt. Co.....	San Jose, Cal.....	265
Carson City Elec. Light Co.....	Carson City, Nev.....	60
Virginia City Electric Light Co....	Virginia City, Nev...	90

Marysville Coal Gas Co.	Marysville, Cal.	60
San Rafael Gas Co.	San Rafael, Cal.	30
City of Santa Cruz.	Santa Cruz, Cal.	90
Corporation of the City of.	Victoria, B. C.	25
Oakland Electric Light and Motor Co.	Oakland, Cal.	280
San Bernardino Elec. Lt. & Power Co.	San Bernardino, Cal.	30
Haywards Electric Light Co.	Haywards, Cal.	30
Red Bluff Electric Light Co.	Red Bluff, Cal.	60
Truckee Electric Light and Power Co.	Truckee, Cal.	45
Eureka Electric Light Co.	Eureka, Cal.	120
Willamette Falls Electric Co.	Portland, Or.	390
City of Vancouver.	Vancouver, Wash.	45
San Diego Gas and Elec. Light Co.	San Diego, Cal.	160
Aberdeen Electric Co.	Aberdeen, Wash.	45
Bellingham Bay Improvement Co.	Sehome, Wash.	195

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Bakersfield Gas and Elec. Light Co.	Bakersfield, Cal.	45

ISOLATED PLANTS.

		Arc Lights.
Dec., 1879...	North Bloomfield Gold M'g Co., North Bloomfield, Cal.	6
Aug., 1880...	Risdon Iron and Locomotive Works, San Francisco, Cal.	6
Sept., 1880...	Jupiter Deep Blue Gravel M'g Co., Angel's Camp, Cal.	6
Jan., 1881...	Selby Smelting and Lead Co., San Francisco, Cal.	18
March, 1881..	Oregon Railroad and Navigation Co	3
April, 1881..	Risdon Iron and Locomotive Works, San Francisco, Cal. (second order).	18
Aug., 1881...	Moodysville Saw Mill Co., Moodysville, B. C.	3
Aug., 1881...	Renton, Holmes & Co., Port Blakely, W. T.	6
Aug., 1881...	Hawaiian Commercial Co., Hawaii, H. I.	6
Dec., 1881...	William Deacon, San Francisco, Cal.	3
Dec., 1881...	Renton, Holmes & Co, Port Blakely, W. T. (second order).	18
Dec., 1881...	Pope & Talbot, Port Gamble, W. T.	30
Dec., 1881...	Moodysville Saw Mill Co., Moodysville, B. C. (second order).	12
April, 1882..	Horace Davis & Co., San Francisco, Cal.	3

April, 1882..	Central Pacific Railroad Co., Oakland Pier, Cal..	65
Oct., 1882....	Hanson & Co., Tacoma, W. T.	18
Oct., 1882....	Pope & Talbot, Utsalady, W. T. (second order)..	18
Nov., 1882...	Rev. A. J. Brunengo, Santa Clara College, Santa Clara, Cal.	3
Aug., 1883...	W. J. Adams, Seabeck, W. T.	18
Aug., 1883...	Stetson & Post, Seattle, W. T.	6
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Aug., 1883...	Ackerson & Moore, Port Discovery, Wash..	12
Sept., 1883...	Hinckley, Spiers & Hayes, San Francisco, Cal.	45
Oct., 1883...	A. Duncan, Duncan's Mills, Cal.	3
Oct., 1883...	California Redwood Co., Eureka, Cal.	18
Oct., 1883...	Spring Valley Hydraulic Gold Co., Cherokee, Cal.	10
Oct., 1883...	Pope & Talbot, Port Ludlow, W. T. (third order).	30
Nov., 1883...	Smith Brothers & Watson, Portland, Or.....	10
Nov., 1883...	Pacific Iron and Nail Co., Oakland, Cal....	14
Dec., 1883...	Falk, Hawley & Co., Arcata, Cal.	7
Dec., 1883...	A. J. Bryant, San Francisco, Cal.	3
Feb., 1884...	Sutter Street Railroad Co., San Francisco, Cal.	6
June, 1885...	South Pacific Coast Railroad Co., Alameda, Cal.	10
Nov., 1885...	California Electrical Works, San Francisco, Cal.	4
June, 1886...	Market Street Cable Railway Co., San Francisco, Cal.	10
Aug., 1886...	St. Ignatius College, San Francisco, Cal....	4
Nov., 1886...	Juan Gallegos, Irvington Station, Cal.....	4
July, 1887...	Olive Mill Land and Improvement Co., Orange, Cal.	4
July, 1887...	Plymouth Cons Gold Mining Co., Plymouth, Cal ..	20
July, 1887...	Carbon Hill Coal Co., Carbonado, Washington Territory.	15
Sept., 1887...	Alaska Mill and Mining Co., Douglass Island, Alaska.	40
Oct., 1887...	Gardner Mill Co., Gardner, Or.	10
Nov., 1887...	Samuel Blair, Fort Bragg, Cal.	10
110		
Dec., 1887...	Carson and Tahoe Lumber and Flume Co., Carson, Nev.	15

Aug., 1888...	Pacific Mill Co., Tacoma, W. T.....	20
Aug., 1888...	Western Beet Sugar Co., Watsonville, Cal...	45
Dec., 1888...	R. H. Campbell, Etna, Cal.....	3
Dec., 1889...	Seattle Cable Co., Seattle, Wash.....	6
June, 1889...	North Pacific Industrial Association, Portland, Or.....	65
June, 1890...	San Francisco Bridge Co., Orland, Cal....	4
	Total number of arc lights.....	5,778

INCANDESCENT PLANTS.

		Incandescent Lights.
May, 1887...	A. Haywards, San Mateo, Cal.....	150
July, 1887...	Horace Davis & Co., San Francisco, Cal. (second order).....	75
July, 1887...	Leland Stanford, Vina, Cal.....	75
Sept., 1887...	A. Haywards, San Mateo, Cal. (second order).....	300
Oct., 1887....	Juan Gallegos, Irvington Station, Cal. (second order).....	150
Dec., 1887...	Examiner Publishing Co., San Francisco, Cal.....	300
June, 1888...	Oro Grande Mining Co., Daggett, Cal.....	150
Sept., 1888...	Steamer "Queen of the Pacific".....	450
Oct., 1888...	Torr & Newburg, Petaluma, Cal.....	15
Nov., 1888...	California Wire Works, San Francisco, Cal.	
.....	Henzel Electric Co., San Francisco, Cal...	196
Nov., 1888...	Woodland Woolen Manufacturing Co., Woodland, Cal.....	25
Dec., 1888...	Steamer "W. S. Hardison".....	40
Sept., 1889...	San Jose Light and Power Co., San Jose, Cal.....	1,000
111		
Oct., 1889...	Schwartz Bros., San Francisco, Cal.....	15
Nov., 1889...	Wheeler, Osgood & Co., Tacoma, Wash...	75
May, 1890...	Marysville Coal Gas Co., Marysville, Cal..	600
June, 1890...	Elko-Tuscarora Mercantile Co., Tuscarora, Nev.....	50
.....	California Electric Light Co., San Francisco, Cal.....	3,750
	Total.....	7,716

RECAPITULATION.

Total number of arc lights.....	5,778
Total number of incandescent lights.....	7,716

112 EXHIBIT 1—"K."

CLEVELAND, Ohio, Feb. 25th, 1890.

George H. Rowe, Esq., Sec'y California Electric Light Co., San Francisco, Cala.:

Dear Sir—We enclose you herewith two copies of a bill of complaint which Mr. Seymour has prepared for your use. We have executed the copies here. Mr. Seymour is having affidavits prepared of Profs. Morton and Brackett for use in your California suits, which will be sent on to you within a few days.

Will you kindly send us, as soon as possible, a copy of the old contract between our campanies which you agreed with Mr. Stockly to furnish us.

Yours truly,

THE BRUSH ELECTRIC COMPANY,
By J. POTTER, *Treasurer.*

113 EXHIBIT 2.

CLEVELAND, Ohio, March 12th, 1890.

The California Electric Light Co., San Francisco, Cal.:

Gentlemen—Mr. Seymour advises us that he has not yet completed the affidavits for you in reference to the Wood lamp. The work has been somewhat difficult owing to the difference between the Wood lamp and the Jenny lamp, and will send affidavits from Messrs. Morton and Brackett as quickly as he can complete them.

Yours truly,

THE BRUSH ELECTRIC COMPANY,
By J. POTTER, *Treasurer.*

114 EXHIBIT 3.

CLEVELAND, Ohio, March 24th, 1890.

California Electric Light Company, San Francisco California:

Gentlemen:—We referred your recent request for a Wood lamp, to Mr. Seymour, who replies that he does not like to part with this lamp at present, as it is the only one we have. He states that he has been delayed in getting the affidavits for you, and that Professor Morton, one of the experts, is now absent in the South, but will return shortly and execute his affidavit. Mr. Seymour states that he has had prepared for use with the affidavits very complete and artistic drawings of the Wood lamp, each set comprising four sheets, which illustrates very fully every feature of construction. These drawings will be photo-lithographed, and a full set attached to each affidavit of Professor

Morton and Professor Brackett. Mr. Seymour says that with these affidavits you can readily make out a *prima facie* case on which to file a motion for preliminary injunction. It will simply be necessary for you to get the affidavit of someone competent, to the effect that the lamps in use by the defendants whom you sue are constructed and adapted to operate in the same manner as the lamps referred to in the affidavits and drawings of Professors Morton and Brackett. Mr. Seymour says further, that after filing the motion and affidavits, the Court will give the defendants a reasonable time to prepare for the defense, probably as much as thirty days. He says his idea was, when talking with you, in case he or Dr. Leggett should be
115 called to California, to take part in the argument of the case, that the lamp could then be taken out for use at the hearing, and could be brought back for use elsewhere.

Yours truly,

THE BRUSH ELECTRIC CO.,
By J. POTTER, *Treasurer*.
L.

116 EXHIBIT 4.

(Telegram.) SAN FRANCISCO, March 31st, 1890.

Brush Electric Company, Cleveland, Ohio:

Have received your letter of the 24th. Send messenger south at our expense for Morton's affidavit. Important that both affidavits and drawings be forwarded without delay. Papers all ready to file, and it is important to this Company that there be no delay. Send Seymour copy of this and wire us at our expense, stating definitely when we may expect affidavits and drawings.

CALIFORNIA ELECTRIC LIGHT CO.

EXHIBIT 5.

(Letter.) SAN FRANCISCO, March 31st, 1890.

Brush Electric Company, Cleveland, Ohio:

Gentlemen—Enclosed is confirmation of dispatch sent you to-day in answer to yours of March 24th. We have procured an affidavit of Professor Keith, whom we have retained in this case; also an affidavit of our own electrician, Mr. Smith, and we were about to file the papers and ask the Court for a restraining order, but your letter of the 24th, stating that drawings and affidavits would be forwarded has prompted us to wait until we can get them, notwithstanding the fact that it is of the utmost
117 import to us that this suit be commenced without any delay.

If these affidavits cannot be procured, then please at once send us copies of the drawings. If the drawings are not photo-lithographed, then please have tracings made of the drawings and forward us the tracings. And as far as the affidavits of the two gentlemen are concerned, we are perfectly willing to incur whatever reasonable expense there may be in obtaining these affidavits. If we find that there is going to be any great amount of delay we will commence the suit without them, though we much prefer to have the affidavits and drawings before bringing this suit. Mr. Seymour may be right, that after filing the motion and affidavits, the Court will give the defendants probably 30 days to prepare for their defense. What we want to get is a restraining order, and we think we can get it if we have the affidavits and drawings referred to, but without them we are doubtful. We are willing to give the necessary bond to have them restrained from using this lamp pending the time when the case can be heard by the Court.

And now regarding Mr. Seymour or Dr. Leggett coming to California, we think that we can get along without any person coming from the East, but of course we would be very glad, and so would our attorneys be very glad of the assistance of a gentleman of the experience of Mr. Seymour or Dr. Leggett in patent cases, and especially in the double lamp case. We understand that these gentlemen are employed by your company, and that if either of them comes, he will come in your interest and at your expense. Our attorneys here of course will be at our expense. We presume there can be no question about this, but the way to avoid a misunderstanding is to have everything clearly understood in advance. We should be glad to hear
118 from you on this subject.

Yours truly,
CALIFORNIA ELECTRIC LIGHT CO.
By GEO. H. ROE, *Secretary.*

119 EXHIBIT 6.

CLEVELAND, Ohio, April 5, 1890.

California Electric Light Co., San Francisco Cal:

Gentlemen—We have received your letter of the 31st ult. in regard to the affidavits, drawings, etc. Mr. Seymour has been very busy this week in Chicago hearing the cases against the Sperry lamp, and we have now sent him your letter. We presume he can send you the affidavits and drawings immediately, and we will write you further as soon as we hear from him. Now, as to Mr. Seymour or Dr. Leggett going to California.

It was understood at the outset that you would bear all the

expenses, and if one of these gentlemen goes to San Francisco it should be at your expense, not ours. We can settle the question against the Wood lamp in other places, and we are arranging to file bills both at Detroit and St. Louis against these lamps. The San Francisco case is for your benefit, and you should bear the expense.

We further think that it is of almost vital importance for you to have one of these gentlemen go out and make the technical part of the argument; they are just about as fully posted in regard to the double lamp patent as Mr. Brush himself, and have been before the Court several times on the question. While your lawyers are no doubt just as able men, yet they will be at a great disadvantage in handling these technical matters. Mr. Seymour or Dr. Leggett would require no special preparation to argue the case, and therefore the charge would simply be their expenses and per diem rates.

120 We suppose that you realize that it is a big jump from the Jenny lamp to the Wood lamp, and the case will have to be fought most vigorously and ably in order to get a favorable decision. The Sperry cases have brought us much nearer the Wood lamp, and we are expecting a decision from Judge Gresham on them shortly. He gave us an injunction on Thursday against the old Sperry lamp, which is a plain copy of ours, and he took under advisement the case against the new Sperry lamp, which latches up one carbon somewhat like the Wood. It would be decidedly your best policy not to press for a hearing until the Judge decides this second Sperry case. If it goes against us, the probability is that you will fail in your case, but it will hardly affect your case as we can see. If, as is likely, the Judge decides this case in our favor, we think it will practically settle the question that we will win the Wood case. We will advise you of Gresham's decision by wire.

Yours truly,

THE BRUSH ELECTRIC CO.

By J. POTTER, *Treasurer.*

121 EXHIBIT 7.

(Telegram). CLEVELAND, Ohio, April 9th, 1890.

California Electric Light Company, San Francisco, Cal.:

Judge Gresham has decided Sperry double lamp case in our favor. We think this insures your success. Seymour will forward affidavits this week.

BRUSH ELECTRIC COMPANY.

EXHIBIT 8.

(Telegram). SAN FRANCISCO, April 9, 1890.

The Brush Electric Company, Cleveland, Ohio:

Our congratulations. Send us copy of Judge Gresham's decision in Sperry cases. Seymour has wired us not to file papers until we get complete new set with affidavits and drawings, which he will send this week. We replied that we would comply with his request.

CALIFORNIA ELECTRIC LIGHT COMPANY.

122

EXHIBIT 9.

CLEVELAND, Ohio, April 17th, 1890.

California Electric Light Co., San Francisco, Cal.:

Gentlemen—Your favor of April 12th has just reached us. We will write you as quickly as possible regarding the matter of payment for time and expenses of Dr. Leggett or Mr. Seymour, to make the trip to California, in order to argue your case. Meantime we desire to advise you of the latest phase of the situation of the double carbon lamp litigation.

We were surprised to receive the information on Saturday, that Judge Gresham had, at the earnest solicitation of the Sperry people and their friends among the opposition, decided to grant a re-argument of the cases against the Sperry lamps. Mr. Seymour was in Washington, but immediately started for Chicago. The argument was held on Tuesday of this week, and Judge Gresham called in Judge Blodgett to sit with him on the case. It was thoroughly reviewed and the judges reserved their decision. Mr. Seymour stopped at Cleveland yesterday on his way back to Washington, and expressed the utmost confidence as to a favorable outcome.

Mr. Seymour says the judges dropped remarks which indicated to his mind how they would decide. If the decision is now favorable to us, it will carry great force with it, and will, we think, make your case almost absolutely certain. It is in effect a re-hearing and with an additional judge to pass judgment. The whole question of the latched up carbon lamp was reviewed before the judges, and they were asked to place a broad
123 interpretation on the patent which would settle the question. If they interpret the patent broadly as asked, they will have to make it cover every lamp that is manufactured in this country at the present time, so far as we know. We will keep you posted as to the outcome by wire.

Yours truly,

BRUSH ELECTRIC CO.

By J. POTTER, *Treasurer.*

Seymour stated yesterday that he would send you drawings and affidavits promptly. If the Sperry decision is all right you should work it into your case.

124 EXHIBIT 10.

CLEVELAND, Ohio, April 18th, 1890.

California Electric Light Co., San Francisco, Cal.:

Gentlemen—Answering further your letter of April 12th, regarding Mr. Seymour or Dr. Leggett's going to California to argue your case there, we have talked this matter over and have come to this conclusion: We are willing to bear so much of the expense of sending one of these gentlemen out as would be involved in our suit against the Wood lamp, say at Detroit, Michigan. Our Detroit company bears the burden of this case, and we expect to have Mr. Seymour or Dr. Leggett present to take part in the argument at our expense. We will if you choose, keep account of the expense involved at Detroit, and will credit you on our books with a similar amount, you then bearing the entire expense of the trip to California, when it is incurred. We think this is liberal on our part, as the California case cannot benefit us as much as the Detroit case. If this disposition of the matter is agreeable to you, let us know.

We do not employ Dr. Leggett or Mr. Seymour by the year, but they give us a per diem rate of $40, instead of their usual charge of $50, in view of the fact that we employ them so largely. We will arrange so that the charge to you shall not be greater than we would pay, namely, $40 per day. We have already written you in regard to the re-hearing of the Sperry cases. No decision has been reached as yet, but we expect one by the fore part of next week. Yours truly,

THE BRUSH ELECTRIC CO,
By J. POTTER, *Treasurer.*

125 EXHIBIT 11.

SAN FRANCISCO, April 21st, 1890.

Brush Electric Co., Cleveland, Ohio:

Gentlemen—Enclosed is a blue print of a drawing Mr. Keith has made of the "New Wood Lamp" referred to in our former communications, together with a description of the drawing, which Mr. Keith has written out for us. We send you these in answer to a request of Mr. Potter to do so. We have also to-day sent a copy of this drawing and description to Mr. Seymour, and have written him as per enclosed carbon copy.

Yours truly,
CALIFORNIA ELECTRIC LIGHT CO.
By GEO. H. ROE, *Sec'y.*

126 EXHIBIT 12.

CLEVELAND, Ohio, April 26th, 1890.

California Electric Light Co., San Francisco, Cal.:

Gentlemen—We have yours of the 21st instant, enclosing drawing of the New Wood Lamp as made by Mr. Keith, together with description of same and copy of your letter to Mr. Seymour. We are very much obliged for these documents, and will submit them to Mr. Brush and to Mr. Stockly on the latter gentleman's return. We understand from Mr. Seymour that you have received the affidavits which he proposed to send.

Yours truly,

THE BRUSH ELECTRIC CO,

By J. POTTER, *Treasurer.*

LE VAKE.

127 EXHIBIT 13.

CLEVELAND, Ohio, April 28th, 1890.

California Electric Light Co., San Francisco, Cal.:

Gentlemen—We are in receipt of your letter of the 23rd instant, asking us to make a statement in regard to the expenses which you would incur by the reason of having Mr. Seymour or Dr. Leggett go to California to argue your case. This is rather a difficult matter and we fear that we cannot make up an accurate statement. Either of the gentlemen referred to would charge you $40 per day for his time, figuring from the date when he left home. No doubt one or two days' time in San Francisco in conference with your lawyers prior to the hearing would be sufficient and a single day for the argument. Your own attorneys can perhaps advise you best on this point, but Mr. Seymour or Dr. Leggett would require not more than one day for the argument which they would expect to make, and possibly not more than half a day in Court. If you could have the date for hearing fixed and then arrange for the attorney from the East to leave just in time to have a day or two for conference with your attorneys beforehand, this would be all that would be required.

We cannot just tell what our Detroit expenses will be, but our people will be willing to credit you with the full amount of expenses incurred there, whatever it may come to.

Yours truly,

THE BRUSH ELECTRIC CO.,

By J. POTTER, *Treasurer.*

L.

128 EXHIBIT 14.

Geo. H. Roe, Esq., San Francisco, Cal.:

CLEVELAND, OHIO, May 19th, 1890.

Dear Sir—Your letter of the 14th inst. is received, and I have noted the contents. In regard to the lawyer's charges I would state that they are $40 per day, including all time spent on any given work, whether in Court, traveling or arguments. As it takes ten days to make the trip from Cleveland to San Francisco Dr. Leggett's charge would be $400 for that time alone, but of course he would utilize it in thinking over the case, and preparing his instructions to your attorneys, etc., etc. It is customary for some patent attorneys to make a much larger charge than their ordinary *per diem* rates for their time spent in Court. We paid Mr. Dickerson, of New York, $5,000 for his argument of one of our patent cases some years ago, and his *per diem* rates were $100. Dr. Leggett and Mr. Seymour, however, do not make any extra charge for Court work, because we keep them busy pretty much all of the time. I think you will begin to realize now what patent litigation costs and what we have been doing in the past few years in keeping three or four attorneys busy nearly all the time.

Yours truly,

J. POTTER, *Treasurer.*

129 EXHIBIT 15.

CLEVELAND, Ohio, June 23d, 1890.

Geo. H. Roe, Esq., San Francisco, Cal.:

Dear Sir—Your favor of the 17th instant addressed to Mr. Potter has been duly received. The personal letter which you speak of has not, however, been received.

We already have a suit against the T-H double lamp, right here in Cleveland, and this suit will be taken up in due course just as soon as it is reached by the Court, and we are doing nothing whatever to delay it a moment. We have not made any concession of any kind to the T-H Company on matters of this sort, and at the present writing we see no reason why this case should not go right along just as soon as it is reached.

We do not see, therefore, why another case should be commenced against the same lamp so far away from home. In the first place, it would be an unnecessary aggravation to the T-H Company, putting them to the expense of defending two suits at widely different points on the same subject, and in the second place it would put us and you to the additional expense and trouble of doing so. We think your best plan is to wait the result of the suit here, and we hardly expect anything except a favorable result in view of the present situation on this double

lamp patent. We send you by this mail our latest form of bill of complaint, which we propose to use in the future. It gives the state of the litigation up to the present moment. In view of the above facts, we prefer that you should not commence any suit against the T-H lamp until after the case here
130 has been decided. It could only act as a bull-dozing proceeding, and against the T-H Company this would amount to nothing in our judgment.

When do you expect to come East again? We have several matters to discuss with you, and the writer will be away a good deal after the 1st of September.

Yours, with kind regards,

G. W. STOCKLY, *President.*

L.

P. S. Mr. Potter is out of town for the week.

131 EXHIBIT 16.

SAN FRANCISCO, July 3d, 1890.

Brush Electric Co., Cleveland, Ohio:

Gentlemen—Enclosed is copy of complaint we will file against the Electric Improvement Company on next Monday morning, the 7th instant, unless something intervenes to prevent. The complaint is substantially a copy of the one you sent us last. The Court here has a rule that a complaint must be on legal cap paper, or in the form of the one herein enclosed; they would not accept the one sent by you. Our attention regarding this complaint is explained in our letter of the 2d instant.

We are proceeding without the new affidavit of Prof. Morton regarding the new Wood lamp referred to in Mr. Seymour's letters, which affidavit has not yet reached us. We shall be glad to have you submit the complaint herein to your attorneys, and see whether there is anything more necessary. We have a number of these complaints printed, anticipating that a number of them would be required here. The writer has casually read over the complaint enclosed, and notices that the complaint herein has the following words in Article Six, in addition to the words in Article Six of the complaint you sent:

"Other than the exclusive license given and granted as aforesaid to your orator, the California Electric Light Company."

There may have been some other minor alterations, but the writer did not discover them in reading over the complaint. The whole matter has been carefully gone over by our attorney and is undoubtedly correct.

Yours truly,

132 CALIFORNIA ELECTRIC LIGHT CO.

By GEO. H. ROE, *Secretary.*

EXHIBIT 17.

(Telegram). CLEVELAND, Ohio, July 10th, 1890.

California Electric Light Co., San Francisco, Cal.:

Wire difficulty with Morton affidavit if possible; time being short to prepare another, can continuance after vacation be had? Otherwise shall Leggett be there 21st?

BRUSH ELECTRIC COMPANY.

133 EXHIBIT 18.

SAN FRANCISCO, July 10th, 1890.

Brush Electric Company, Cleveland, Ohio:

Morton's first affidavit used; second affidavit made in New Jersey case, Brush against Citizens; Court would not permit change of title. We don't want continuance, but fear defendants will; think they expect Fort Wayne people to defend; have decided not to have Leggett or Seymour at hearing on preliminary injunction. Particulars by mail.

CALIFORNIA ELECTRIC LIGHT CO.

134 EXHIBIT 19.

(Telegram.) CLEVELAND, Ohio, July 11th, 1890.

California Electric Light Co., San Francisco, Cal.

Your telegram received; your action forces first hearing against Wood lamp in California. We must therefore insist upon Leggett taking part in argument, unless case is continued till after hearing here this Fall. We rely on you to telegraph us in ample time for hearing; our letter on the way to you will explain. Answer.

BRUSH ELECTRIC CO.

EXHIBIT 20.

(Telegram.) SAN FRANCISCO, July 11th, 1890.

Brush Electric Company, Cleveland Ohio:

Your telegram received; case set for 21st; probably not be tried until 28th; will ascertain positively Monday morning and telegraph you.

CALIFORNIA ELECTRIC LIGHT CO.

135 EXHIBIT 21.

(Telegram.) CLEVELAND, Ohio, July 12, 1890.

California Electric Light Co., San Francisco Cal.:

Your telegram received; we learn that Judge Taylor of Fort Wayne will probably go to California to argue against you; don't fail to advise us date of hearing in time for Leggett to get there.

BRUSH ELECTRIC COMPANY.

EXHIBIT 22.

(Telegram.) CLEVELAND, Ohio, July 14th, 1890.

California Electric Light Co., San Francisco, Cal.:

Has time of hearing been positively decided. Advise us by telegraph immediately.

BRUSH ELECTRIC COMPANY.

136

EXHIBIT 23.

(Telegram.) SAN FRANCISCO, July 14th, 1890.

The Brush Electric Company, Cleveland, Ohio:

Case set for 28th; arrange to have Leggett or Seymour arrive here 24th or 25th. Wire us when he starts.

CALIFORNIA ELECTRIC LIGHT CO.

EXHIBIT 24.

(Telegram.) CLEVELAND, Ohio, July 15th, 1890.

California Electric Light Company, San Francisco, Cal.:

Leggett will be there 24th or 25th.

BRUSH ELECTRIC COMPANY.

137

EXHIBIT 25.

SAN FRANCISCO, July 14th, 1890.

Brush Electric Co., Cleveland, Ohio:

Gentlemen—As our letter already on the way will explain to you, we felt that there was no necessity of going to the expense of bringing one of the attorneys from Cleveland to try the case against the Electric Improvement Company, especially the preliminary injunction, because the main trial of the case would be after the hearing on the preliminary injunction, and we could then secure the help of the attorneys from Cleveland, if necessary. We have at considerable expense engaged special counsel in this city, outside of our own attorneys, and we had fully determined not to have your attorneys come from Cleveland, but your telegrams seemed to indicate that you considered it necessary, and that you were very anxious that one of your attorneys should come, and we have therefore decided, for the purpose of meeting your views and at your request, to have one of these gentlemen come from the East, and have telegraphed you to-day as per enclosed confirmation. We shall be glad to know the day on which the gentleman will arrive here, so that our attorneys could arrange to meet him very shortly after his arrival. Kindly

telegraph us to that effect, if you have not already done so before this reaches you.

Yours truly,
CALIFORNIA ELECTRIC LIGHT CO.
By GEO. H. ROE, *Secretary.*

138 EXHIBIT 26.

CLEVELAND, Ohio, July 21st, 1890.

Geo. H. Roe, Esq., Secretary, San Francisco, Cal.:

Dear Sir—We are in receipt of your favor of the 14th instant in reference to the litigation against the Electric Improvement Company. As we have heretofore wired you, Dr. Leggett left here expecting to arrive in San Francisco the 24th or 25th instant as you requested. We deemed it quite important that he should be present at the hearing, as he is fully advised as to our double carbon lamp litigation, having been engaged in all the suits so far instituted. Further, it is considered essential that the preliminary injunction should be continued.

Yours truly,
THE BRUSH ELECTRIC COMPANY.
By WM. B. BOLTON, *Gen'l Counsel.*

139 EXHIBIT 27.

CLEVELAND, Ohio, Aug. 18th, 1890.

California Electric Light Co., San Francisco, Cal.:

Gentlemen—I enclose a copy of the opinion of Judge Brown sitting as Circuit Judge, concurred in by Judge Ricks, granting injunction in the Western Electric Co. case heard at Toledo.

You had better bring this to the attention of your attorneys immediately, as it may have an important bearing upon the Electric Improvement case.

Very truly yours,
WM. B. BOLTON, *Gen'l Counsel.*

(Endorsed): Service of the within affidavit admitted by copy this 9th day of March, 1891.

LOUIS T. HAGGIN,
Solicitor for Defendant.

Filed March 9, 1891.

L. S. B. SAWYER, *Clerk.*
By F. D. MONCKTON, *Deputy Clerk.*

140 In the Circuit Court of the United States in and for the Ninth Circuit and Northern District of California.

BRUSH ELECTRIC COMPANY, CALIFORNIA ELECTRIC LIGHT COMPANY, and SAN JOSE LIGHT AND POWER COMPANY,
Complainants,
vs.
ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE,
Respondents.
} In Equity No. 11,205.

State of California, City and County of San Francisco, *ss.*

William Kerr, being first duly sworn, on oath deposes and says :

That he is a citizen of the United States and a resident of the State of California. That he is of the age of 63 years.

That he is the William Kerr referred to in the affidavit of George H. Roe and in the assignments and agreements made between the original Telegraph Supply Company and William Kerr.

That he is a stockholder and director in the California Electric Light Company, and that he has been such stockholder and director in said company since the organization of the same.

That he has read the affidavit of George H. Roe, made and filed herein, and knows the contents thereof, and that the same is true of his own knowledge.

WM. KERR.

141 Subscribed and sworn to before me this 7th day of March, 1891.

[SEAL.] E. H. THARP,
Notary Public in and for the City and County of San Francisco, State of California.

(Endorsed): Service of the within affidavit this 9th day of March, 1891, is hereby admitted.

LOUIS T. HAGGIN,
Solicitor for Defendant.

Filed March 9, 1891.

L. S. B. SAWYER, *Clerk.*
By F. D. MONCKTON, *Deputy Clerk.*

142 In the Circuit Court of the United States in and for the Ninth Circuit and Northern District of California.

BRUSH ELECTRIC COMPANY,
CALIFORNIA ELECTRIC LIGHT COMPANY, and
SAN JOSE LIGHT AND POWER COMPANY,
Complainants,
vs.
ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE,
Respondent.

In Equity.
No. 11,205.

State of California, City and County of San Francisco, *ss.*

P. B. Cornwall, being first duly sworn, on oath deposes and says:

That he is a citizen of the United States, a resident of the State of California, and is of the age of sixty or more years.

That he is the present President of the California Electric Light Company, and a stockholder therein; and that he has been such President of said company ever since the 14th day of September, 1881.

That he knows George H. Roe; that he is the present Secretary of said company, and to the knowledge of this affiant has held that position since the organization of the company, and that he is now and at all times has been the acting Manager of said company.

That he has read the affidavit of George H. Roe, made herein, and also the exhibits attached thereto; that the statements in said affidavit so made by said George H. Roe are true to
143 the knowledge of this affiant.

P. B. CORNWALL.

Subscribed and sworn to before me this 9th day of March, 1891.

[SEAL.] GEO. T. KNOX,
Notary Public in and for the City and County of San Francisco, State of California.

(Endorsed): Service of the within affidavit this 9th day of March, 1891, is hereby admitted.

LOUIS T. HAGGIN,
Solicitor for Defendant.

Filed March 9, 1891.

L. S. B. SAWYER, *Clerk.*
By F. D. MONCKTON, *Deputy Clerk.*

144 In the United States Circuit Court, in and for the Ninth Circuit and Northern District of California.

BRUSH ELECTRIC COMPANY,
CALIFORNIA ELECTRIC COMPANY, and the
SAN JOSE LIGHT AND POWER COMPANY,
Complainants,
vs.
ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE,
Respondents.
} In Equity. No. 11,205.

State of Illinois, County of Cook, *ss.*

N. S. Possons, being first duly sworn, on oath deposes and says:

That he is a citizen of the United States, and a resident of the City of Chicago, State of Illinois. That he is 46 years of age. That he is acquainted with the corporation known as the Brush Electric Company, and is also acquainted with the existence of that corporation known as the California Electric Light Company. That he has been familiar with the affairs of the Brush Electric Company, and also with the affairs of the Telegraph Supply Company, both of which corporations have, during all the period of their existence, carried on business in the City of Cleveland, State of Ohio.

That he was superintendent of the old Telegraph Supply Company before its name was changed to the Brush Electric
145 Company, and that he was afterwards superintendent of the Brush Electric Company, from the date of its organization up to the 7th day of October, 1890.

That he was the superintendent of the Telegraph Supply Company at the time that Charles F. Brush made the assignment of his patents then obtained by him for electric dynamo machines, electric lamps and similar apparatus, and that he was also superintendent of the said Telegraph Supply Company's successor, viz., the Brush Electric Company, at the time of the change of the name of the said Telegraph Supply Company to that of the said Brush Electric Company; and that he was superintendent at the time that both the said corporations, viz., the Telegraph Supply Company and the Brush Electric Company, gave to William Kerr, and afterwards to the California Electric Light Company, the exclusive right throughout the States of California, Nevada, Oregon and the Territory of Washington, to "use and sell all inventions and devices under any and all patents owned or controlled by the Telegraph Supply Company, or which it might become possessed of, pertaining to dynamo electric machines, lights, lamps, carbons and similar apparatus for the full term of such patents, and all extensions and re-issues thereof."

This affiant further states that from the date of the first agreement made between the Telegraph Supply Company and the said William Kerr, the assignor of the California Electric Light Company, viz., the 2nd day of August, 1879, up to the 7th day of October, 1890, the said California Electric Light Company, to the personal knowledge of this affiant, maintained almost weekly communications with the home company, viz., the Brush Electric Company, the said successor of the Telegraph Supply Company.

146 That it made frequent and large purchases of the materials produced by the Brush Electric Company; that it introduced into general use in the Pacific States the devices so patented by Charles F. Brush.

That it was the first person to introduce electric lighting to any considerable extent upon the Pacific Coast. That it established the first central arc station for electric lighting within the four States of California, Nevada, Oregon and the Territory of Washington, to the best knowledge and belief of this affiant.

That at all the times during the period of affiant's position as Superintendent of the Telegraph Supply Company and the Brush Electric Company, the California Electric Light Company was looked upon by the officers of said companies, as one of the best and most valuable customers which said companies had anywhere within the United States.

That it paid its bills promptly and met every legal obligation, so far as this affiant knows, imposed upon it by the parent companies, and that its business, so far as affiant was able to observe, was always transacted with promptness and fidelity.

This affiant further states that it was always understood among the officers of the home companies, of which this affiant was the Superintendent, that those companies would sustain and support the California Electric Light Company in all legal or other efforts made in Court or out of it, to defeat infringing devices on machinery which the said California Electric Light Company was using or selling under the contract made with the said Brush Electric Company, and that they would at all times assist the California Electric Light Company in defending

147 and maintaining the integrity of the patents owned by the said Brush Electric Company. That this condition of affairs existed and continued during all the period of this affiant's superintendency of the said Telegraph Supply Company and the said Brush Electric Company.

This affiant further states that on or about the 19th day of January, 1891, the governing authority of the Brush Electric Company was changed by placing as President of the said Company, Silas A. Barton, one of the Directors of the Thompson-Houston Electric Company, and for another Director, Charles

A. Coff, the active executive officer in control of the Thompson-Houston Electric Company's business; the fact being that the large and controlling stockholders and officers of the Thompson-Houston Electric Company had purchased a majority, being the control of the capital stock of the Brush Electric Company, and thus the Thompson-Houston Electric Company has absolute control of the stock and the future business of the Brush Electric Company.

That the officers and leading stockholders of the Thompson-Houston Electric Company also own the control and direct the management of the Fort Wayne Electric Company, and thus one of the parties plaintiff to this action, viz., the Brush Electric Company, is under its present management interested in the defeat of the very actions that it had previously inspired in California and elsewhere, like the case of the "Brush Electric Company and the California Electric Light Company *vs.* the Electric Improvement Company of San Francisco," an action that this affiant understands was commenced in San Francisco by order of the Brush Electric Company, about a year ago, and in which an injunction was issued, as this affiant is informed and believes, against the so-called Wood lamp.

N. S. POSSONS.

148 Subscribed and sworn to before me this twenty-fourth day of February, 1891.

[NOTARY SEAL.] CELESTE P. CHAPMAN.

State of Illinois, Cook County, *ss.*

I, Henry Wulff, Clerk of County Court of Cook County, the same being a Court of Record, do hereby certify that Celeste P. Chapman, Esq., whose name is subscribed to the annexed jurat, was at the time of signing the same a notary public in Cook County, duly commissioned, sworn and acting as such, and authorized to administer oaths ; that I am well acquainted with his handwriting, and I verily believe that the signature to the said jurat is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at the City of Chicago, in the said County, this 26th day of February, 1891.

[SEAL.] HENRY WULFF, *Clerk.*

(Endorsed): Service of the within affidavit admitted by copy this 9th day of March, 1891.

LOUIS T. HAGGIN,
Solicitor for Defendant.

Filed March 9, 1891.

L. S. B. SAWYER, *Clerk.*
By F. D. MONCKTON, *Deputy Clerk.*

149 In the Circuit Court of the United States, in and for the Ninth Circuit and Northern District of California.

BRUSH ELECTRIC COMPANY,
CALIFORNIA ELECTRIC LIGHT COMPANY,
SAN JOSE LIGHT AND POWER COMPANY,
Complainants,
vs.
ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE,
Respondent.
} In Equity No.

State of California, City and County of San Francisco, *ss.*

George W. Reynolds, being first duly sworn, on oath deposes and says :

That he is a citizen of the United States and a resident of the City and County of San Francisco, and that he is over the age of twenty-one years.

That he is a stockholder of the Electric Improvement Company of San Francisco, and that since the commencement of this action, he has examined the books of said company as such stockholder, and that the said company owns of the capital stock of the Electric Improvement Company of San Jose, thirty-seven hundred and fifty (3750) shares out of a total of five thousand (5000) shares, the latter being the whole of the capital stock of said last named incorporation.

GEO. W. REYNOLDS.

150 Subscribed and sworn to before me this 27th day of February, 1891.

[NOTARY SEAL.] GAILLARD STONEY,
Notary Public in and for the City and County of San Francisco, State of California.

(Endorsed): Service of the within affidavit admitted by copy this 9th day of March, 1891.

LOUIS T. HAGGIN,
Solicitor for Defendant.

Filed March 9, 1891.

L. S. B. SAWYER, *Clerk.*
By F. D. MONCKTON, *Deputy Clerk.*

151 In the Circuit Court of the United States, of the Ninth Judicial Circuit, in and for the Northern District of California.

BRUSH ELECTRIC CO. ET AL.,
vs.
ELECTRIC IMPROVEMENT CO. OF SAN JOSE.
} No. 11,205.

The appearance of the complainant, the Brush Electric Co., is

hereby entered for the purpose of moving to dismiss the suit as to it, and I hereby appear as its solicitor for that purpose only.

EDWD. P. COLE.
HENRY P. BOWIE.

Entered April 20, 1891.

L. S. B. SAWYER, *Clerk*.

152 At a stated term, to wit, the February term, A. D. 1891, of the Circuit Court, of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the Court room in the City and County of San Francisco, on Monday, the 20th day of April, in the year of our Lord one thousand eight hundred and ninety-one.

Present: The Honorable THOMAS P. HAWLEY, United States District Judge, District of Nevada.

BRUSH ELECTRIC COMPANY ET AL.,
vs.
ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE. } No. 11,205.

It is hereby ordered that the hearing upon the motion to dismiss as to the complainant, the Brush Electric Company, be continued indefinitely, said motion to be taken up on five days' notice.

153 In the Circuit Court of the United States, for the Northern District of California.

BRUSH ELECTRIC CO. ET AL., *Complainants*,
vs.
ELECTRIC IMPROVEMENT CO. OF SAN JOSE, *Respondent*. } No. 11,205.

Messrs. Lloyd and Wood, and E. P. Cole, Attorneys for Brush Electric Company, and L. T. Haggin, Attorney for Defendant:

You are hereby notified that on Monday, the 28th day of September, A. D. 1891, we shall place upon the calendar of said Court and call up for hearing the motion heretofore made in said case by the Brush Electric Company, that the said suit be dismissed as to the Brush Electric Company.

And in accordance with the stipulation heretofore entered into by and between the parties, we herewith serve upon you the affidavits in rebuttal on behalf of the California Electric Light Co., one of the complainants to be used upon the hearing of said motion.

Dated at San Francisco, this 17th day of September, 1891.

Yours truly,
ESTEE, WILSON & McCUTCHEN,
LANGHORNE & MILLER,
Attorneys for Complainants.

(Endorsed): Service admitted September , 1891.
154 LLOYD & WOOD,
Attorneys for Brush Electric Co.

Service of the within notice admitted this 18th day of September, A. D. 1891.

EDWARD P. COLE,
For Brush Electric Co.

Filed Sept. 19, 1891.

L. S. B. SAWYER, *Clerk.*

155 In the Circuit Court of the United States, in and for the Ninth Circuit and Northern District of California.

THE BRUSH ELECTRIC COMPANY,
THE CALIFORNIA ELECTRIC LIGHT COMPANY, and the SAN JOSE LIGHT AND POWER COMPANY,
Plaintiffs.
vs.
THE ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE,
Defendant.
No. 11,205.

United States of America, Ninth Circuit, District of California, City and County of San Francisco, *ss.*

George H. Roe being duly sworn deposes and says:

That at all the times hereinafter mentioned he was and is now the Secretary and acting General Manager of the California Electric Light Company, one of the complainants in this case.

That it is true that since its incorporation said California Electric Light Company has purchased electrical apparatus, to-wit, certain electric light arc machines from parties other than the Brush Electric Company, to wit, from the Thompson-Houston Electric Company of Boston, Massachusetts, and has used the same in the City and County of San Francisco.

That the same are the electric arc light machines and the electric arc lamps of the Thompson-Houston make referred to in the affidavits heretofore filed in this case on behalf of the
156 Brush Electric Company, on its motion to dismiss the case.

But in this behalf, affiant avers that all such electric light arc machines and lamps were purchased and used by said California Electric Company with the full knowledge and consent of the Brush Electric Company, given in writing, as will more fully appear from letters written to the California Electric Light Company, by the Brush Electric Company, through its President, G. W. Stockly, copies of which are hereunto annexed and marked "Exhibits 1, 2 and 3," respectively, and which are hereby referred to and by such reference made a part hereof.

Affiant further says that the arc machines and lamps referred to in said Exhibits 1, 2 and 3 are the machines and lamps referred to in the affidavits heretofore filed on behalf of the Brush Electric Company, on its motion to dismiss, as having been purchased and used by the California Electric Company.

That all of the provisos contained in the said three Exhibits 1, 2 and 3 have been fully complied with by the California Electric Light Company, nor has that company ever sold or dealt in any apparatus of the character specified in the first clause of the contract and license between the Telegraph Supply Company and William Kerr, dated August 2nd, 1879, except that sold by the said Telegraph Supply Company and the Brush Electric Company, without the written consent of said Telegraph Supply Company and the Brush Electric Company.

GEO. H. ROE.

Subscribed and sworn, before me this 4th day of Sept., 1891.
[SEAL.] GEO. T. KNOX, *Notary Public.*

157 EXHIBIT 1.

CLEVELAND, Ohio, Nov. 16th, 1886.

California Electric Light Co., San Francisco, Cal.:

Gentlemen—We hereby give you permission to purchase from the Thompson-Houston Electric Company of Boston, Mass., three 45-light arc machines and 135 arc lamps, provided you obtain therewith the exclusive control of the Thompson-Houston system for your territory, and provided that you make use of these machines, if you do put them into actual use, in such way as to protect, as far as possible, the interests of the Brush system; and provided also that you do not in the future, during the term of your contract with us, make any further purchases of electric light apparatus, carbons or supplies from any other parties, or from any other source, except from this company, without our written consent.

Yours respectfully,
THE BRUSH ELECTRIC COMPANY.
G. W. STOCKLY, *President.*
P.

158 EXHIBIT 2.

CLEVELAND, Ohio, Dec. 2nd, 1886.

California Electric Light Co., San Francisco, Cal.:

Gentlemen—We hereby give you permission to purchase from the Thomson-Houston Electric Company of Boston, Mass., three 45 arc machines and 135 arc lamps, and permission to use, rent and sell the same machinery and lamps, providing you obtain therewith the exclusive control of the Thomson-Houston system for central station arc lighting in the City of San Francisco. You are to make use of these machines in such a way as to protect, as far as possible, without detriment to your own interests, the interests of the Brush system, and are not in the future, during the term of your contract with us, to make any further purchases of electrical apparatus, carbons or electrical supplies of the same character as the Brush apparatus from any other parties, or from any other source, except from this company, without consent, our written consent.

Yours respectfully,
THE BRUSH ELECTRIC COMPANY.
By G. W. STOCKLY, *President.*
P.

159 EXHIBIT 3.

CLEVELAND, Ohio, Feby. 11th, 1890.

California Electric Light Company, San Francisco, Cal.:

Gentlemen—We are aware of the fact that from time to time in the past you have found it necessary to purchase, sell or use, to a limited extent, dynamos, lamps, motors, etc., that were not manufactured by us. We have been advised of these matters by you from time to time, and you have received our consent to these purchases in some cases. Inasmuch as we are satisfied that these transactions on your part were intended for the general benefit of the Brush system in your territory, and to prevent troublesome competition, we desire to state that we do not and shall not regard them as infractions of your contract with us, in which you were confined to the use of Brush apparatus. We are aware that the amount of these purchases has not been large, and we also understand that our action in this case will not be a precedent for any similar purchases in the future, and that you will seek our consent in each case where anything of this kind arises in future.

Yours truly,
G. W. STOCKLY, *President.*

(Endorsed): Received copy of within affidavit.
E. P. COLE,
Atty. for Brush E. Co.

Filed Sept. 19, 1891.
L. S. B. SAWYER, *Clerk.*

160 In the Circuit Court of the United States for the Ninth Circuit and Northern District of California.

BRUSH ELECTRIC COMPANY,
CALIFORNIA ELECTRIC LIGHT COMPANY,
SAN JOSE LIGHT AND POWER COMPANY,
Complainants,
vs.
ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE,
Respondents.
} In Equity.

State of California, City and County of San Francisco, *to wit:*

Thomas Addison, being first duly sworn, deposes and says that he is a resident of the city of Oakland, County of Alameda, and is aged 37.

That he is and has been for some time last past the agent for the States of California and Nevada for the Thomson-Houston Electric Company of Boston.

That during July or August of 1890, he was at the electric lighting station of the California Electric Light Company in the City and County of San Francisco, one of the complainants herein, and then and there saw in actual use by said California Electric Light Co. several fifty-light Thomson-Houston Electric Company's arc dynamos. That he, by reason of his position as agent, knows that said lights were sold by the Thomson-Houston Electric Co. to the California Electric Light Company, sometime previous to the year 1890, and to the best of his information and belief, the said lamps are still in use by the
161 said California Electric Light Co., but that he is unable to state the same positively, because he has not been in their station since.

That by reason of his official position as agent of the Thomson-Houston Electric Co., he has received information of the existence of an agreement in writing between said company and the California Electric Light Company, under the terms and conditions of which the California Electric Light Company agrees to certain conditions regarding the use of the Thomson-Houston Electric Co.'s lamps and apparatus, and the Thomson-Houston Electric Company agrees to keep out of the said San Francisco in so far as the business of the central station electric lighting is concerned. And that said contract is still in full

force and effect to the best of this affiant's information and belief.

THOS. ADDISON.

Subscribed and sworn to this 10th day of April, 1891.
[NOTARY SEAL.] OTIS V. SAWYER,
Notary Public.

(Endorsed): Filed Oct. 12, 1891.
L. S. B. SAWYER, *Clerk.*

162 In the Circuit Court of the United States for the Ninth Circuit, Northern District of California.

BRUSH ELECTRIC COMPANY,
CALIFORNIA ELECTRIC LIGHT COMPANY,
SAN JOSE LIGHT AND POWER COMPANY,
Complainants,
vs.
ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE,
Respondents.
} In Equity.

State of California, City and County of San Francisco, *to wit:*

Augustus J. Bowie, being duly sworn, deposes and says that he is a citizen of the United States and a resident of the City and County of San Francisco, State of California, and is aged 45.

That he has read the affidavit of George H. Roe, filed herein, and says it is true, as stated by said Roe in his said affidavit, that he, affiant, is the President of the Electric Improvement Company of San Jose, the respondent in this action, and that he is the manager of the Electric Improvement Company of San Francisco, referred to in said affidavit of said Roe; but that it is not true, as stated in said affidavit, that the Electric Improvement Company of San Jose, the respondent in this action, is actually a branch of the Electric Improvement Company of San Francisco, but on the contrary this affiant states of his own knowledge that said Electric Improvement Company of San Jose is not actually or otherwise a branch of the Electric Improvement Company of San Francisco, but is an independent company, existing under and by virtue of the laws of the State of Califor-
163 nia, and has no connection with the Electric Improvement Company of San Francisco.

That the Electric Improvement Company of San Jose has its own Board of Directors and its own manager, and said Board of Directors control and direct the business and affairs of said company without any control or supervision whatsoever of the Electric Improvement Company of San Francisco.

And affiant further says that it is not true, as stated in said affidavit of George H. Roe, that the Electric Improvement Company of San Francisco supplies the Electric Improvement Company of San Jose with all its electrical and other goods, but that on the contrary the said Electric Improvement Company of San Jose buys its electrical and other goods from the best point in the open market, according to the view of the manager of the Electric Improvement Company of San Jose, at whatever place it can get the best terms.

That within the last three months the Electric Improvement Company of San Jose has made large purchases of electrical supplies and material from Chicago, and from other points.

AUG. J. BOWIE.

Subscribed and sworn to before me this 8th day of April, 1891.

[NOTARY SEAL.] OTIS V. SAWYER,
Notary Public.

Filed Oct. 12, 1891.

L. S. B. SAWYER, *Clerk.*

164 In the Circuit Court of the United States, for the Ninth Circuit, Northern District of California.

BRUSH ELECTRIC COMPANY,
CALIFORNIA ELECTRIC LIGHT COMPANY,
SAN JOSE LIGHT AND POWER COMPANY,
Complainants,
vs.
ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE,
Respondent.
} In Equity.

State of California, City and County of San Francisco, *to wit:*

James William Rea, being first duly sworn, deposes and says that he is a resident of Santa Clara County, State of California, and is aged 36 years; that he is and has been one of the Directors of the Electric Improvement Company of San Jose, respondent in this action, ever since said Company was organized, and is and has been Vice-President since its organization.

That he has read the affidavit of Augustus J. Bowie herein, and knows the contents thereof. That the statements therein contained are true to the personal knowledge of affiant. That the Electric Improvement Company of San Jose has only bought the apparatus of the Ft. Wayne Electric Company from the Electric Improvement Company of San Francisco, for the reason that the said Electric Improvement Company of San Francisco is the sole agent for this apparatus for this coast, but for all other electrical and other supplies the Electric Improve-

ment Company of San Jose purchases from the best
165 point on the open market.

JAS. W. REA.

Subscribed and sworn to before me this 8th day of April, 1891.
[SEAL.] OTIS V. SAWYER,
Notary Public.

(Endorsed): Filed Oct. 12, 1891.
L. S. B. SAWYER, *Clerk.*

166 In the Circuit Court of the United States, in and for the Ninth Circuit and Northern District of California.

BRUSH ELECTRIC COMPANY,
CALIFORNIA ELECTRIC LIGHT COMPANY,
SAN JOSE LIGHT AND POWER COMPANY,
Complainants,
vs.
ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE,
Respondents.
} In Equity.

State of California, City and County of San Francisco, *to wit:*

Wallace W. Briggs, being duly sworn, deposes and says:

That he is and has been for more than five years last past, a resident of the City and County of San Francisco, State of California. That he is 21 years of age, and is by occupation sales agent for the Electric Improvement Company of San Francisco.

That he was in the employ of the California Electric Light Company, the complainant herein, from the year 1887 to the end of the year 1888, and thereafter was engaged in the general business of electric lighting and construction. That he is thoroughly acquainted with the business of electric lighting and construction, and knows the Thomson-Huston Electric Co.'s arc dynamos and lamps, and has known them ever since the year 1887.

Affiant knows positively that during the years 1887, 1888, 1889 and 1890, the California Electric Light Company,
167 complainant herein, had in actual and constant use at its central station office on Stevenson street, in the City and County of San Francisco, State of California, four fifty-light dynamo machines, two of said machines being in use by said Electric Light Company during the day, and two during the night, during all of said period from the year 1887 to the year 1890, and that said California Electric Light Company used the

said dynamos of the Thomson-Houston Electric Company during the said period of four years, for the purpose of supplying and selling electric light to the customers of said California Electric Light Company of said City and County of San Francisco.

Affiant further says that he last saw these machines in use by said California Electric Light Company in the year 1890, on the occasion of affiant's last visit to the central station office of said California Electric Light Company.

WALLACE W. BRIGGS.

Subscribed and sworn to this 11th day of April, 1891.
[SEAL.] OTIS V. SAWYER, *Notary Public.*

Filed Oct. 12, 1891.

L. S. B. SAWYER, *Clerk.*

168 In the Circuit Court of the United States, for the Ninth Circuit, Northern District of California.

BRUSH ELECTRIC COMPANY,
CALIFORNIA ELECTRIC LIGHT COMPANY,
SAN JOSE LIGHT AND POWER COMPANY,
Complainants,
vs.
ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE,
Respondent.
} In Equity.

State of California, City and County of San Francisco, *to wit:*

Frederick G. Cartwright, being first duly sworn, deposes and says that he is a resident of the City and County of San Francisco, State of California, and aged 25 years.

That he is an electrical engineer, and has been for eight years last past, and has, in his capacity of electrical engineer, been connected with the Brush Electric Company, the Ft. Wayne Electric Company, and the Thomson-Houston Electric Company. That he is familiar with the Thomson-Houston Electric Co.'s system in various details, and affiant knows that the California Electric Light Co., one of the complainants in this action, is and has been for some time, to wit, for more than six months last past, supplying to persons in the said City and County of San Francisco arc lights of the Thomson-Houston Electric Company, and that said complainant is running and using the same. That among other places where said Thomson-Houston Electric Co.'s arc lights are in use by said California Electric
169 Light Company are the following: J. L. White, Cook

Bros., Raphael Weil & Co., Palace Hotel, Sullivan, Burtis & Dewey, Newman & Levison.

FRED'K G. CARTWRIGHT.

Subscribed and sworn to this 10th day of April, 1891.
[SEAL.] OTIS V. SAWYER,
Notary Public.

Filed Oct. 12, 1891.

L. S. B. SAWYER, *Clerk.*

170 In the Circuit Court of the United States, for the Ninth Circuit, Northern District of California.

BRUSH ELECTRIC COMPANY,
CALIFORNIA ELECTRIC LIGHT COMPANY,
SAN JOSE LIGHT AND POWER COMPANY,
Complainants,
vs.
ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE,
Respondent.
} In Equity.

State of California, City and County of San Francisco, *to wit:*

Henry Curtis, being first duly sworn, deposes and says that he is a resident of the City and County of San Francisco, State of California, and aged 47 years.

That he is foreman of Electric Line Construction of the Electric Improvement Company of San Francisco; that he was formerly an employee of the California Electric Light Company, complainant in this action, and while in such employ, knew of the use by the said California Electric Light Company of Thomson-Houston Electric Co.'s arc lamps and apparatus. And that said Thomson-Houston apparatus was in use by said California Electric Light Company up to the time affiant severed his connection with said Company on the 21st day of March, 1888.

That he has heard read the affidavit of F. G. Cartwright herein and knows the contents thereof, and that the said affidavit is true to his own knowledge in respect to the persons and places where said Thomson-Houston Electric Co.'s Arc Lights
171 are now being used.

his
HENRY x CURTIS.
mark

The witness "Henry Curtis" being unable to write, at his request I wrote his name, and he thereupon affixed his mark.

OTIS V. SAWYER, *Notary Public.*

Subscribed and sworn to, this 10th day of April, 1891.
[SEAL.] OTIS V. SAWYER, *Notary Public.*

(Endorsed): Filed Oct. 12, 1891.
L. S. B. SAWYER, *Clerk.*

172 In the Circuit Court of the United States in and for the Ninth Circuit and Northern District of California.

BRUSH ELECTRIC COMPANY,
CALIFORNIA ELECTRIC LIGHT COMPANY, and
SAN JOSE LIGHT AND POWER COMPANY,
Complainants,
vs.
ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE,
Respondent.
In Equity.
No. 11,205.

State of Ohio, County of Cuyahoga, Northern District of Ohio.

J. Potter, being first duly sworn, on oath deposes and says:

That he is, and has been, for a number of years past, a Director of The Brush Electric Company, and has also been its Treasurer since the year 1884, and in the absence of the President, has for a long time past acted and performed the duties of its chief executive officer, and as such officer and director is, and has been, thoroughly and intimately acquainted with all the business relations and transactions of said Company. Affiant says that he has read the affidavit of N. S. Possons and of George H. Roe filed herein, and says that it is true, as stated by said Possons in his affidavit, that he was superintendent of the shops of the Telegraph Supply Company and of the Brush Electric Company., but that at no time was he a Director or an executive officer
173 of either of said companies, or had he any control, nor was he at any time consulted as to the policy or business management or relations of either of said companies, but that his duties were confined simply and solely to the mechanical superintendence of the shops in the manufacture of electric lighting apparatus. Affiant further says that any further information as to the business, or other relations, between said Brush Electric Company and said California Electric Light Company, which said Possons might have possessed would be only from hearsay, and not from any knowledge he could obtain, or have, by reason of his position as said superintendent, and that he had no means of accurate knowledge as to the policy or intent of said Brush Electric Company as to sustaining and supporting said California Electric Light Company in its efforts, legal or otherwise, to defeat infringing devices on machinery as stated in his said

affidavit, but, on the contrary, matters of this character were determined entirely and without any knowledge upon the part of said Possons by the executive officers and by the Board of Directors of said The Brush Electric Company, and it was not a matter concerning which said Possons could have either accurate knowledge or definite information.

Affiant further says that it is true, as stated in the affidavit of said Possons and of said Roe, that on or about the 19th of January, A. D. 1891, S. A. Barton, John S. Bartlett and C. A. Coffin were elected Directors of said The Brush Electric Company, and it is also true that said C. A. Coffin is one of the Directors of said Thomson-Houston Electric Company, but that it is not true that said S. A. Barton and John S. Bartlett, or either of them, are Directors of said Thomson-Houston Electric Company, or officers of the same, but, on the contrary, affiant
174 says said Barton and Bartlett are not officers or Directors of said Thomson-Houston Electric Company, and further affiant says that the Board of Directors of said The Brush Electric Company is composed of seven members, and that the remaining directors are William B. Bolton, Charles S. Pease, J. Potter and Myron T. Herrick, neither of whom are, or ever have been, employed by, or associated with, or have been stockholders in said Thomson-Houston Electric Company, and that said last named four members of said Board of Directors, constitute a majority thereof. Affiant further says that besides the stockholders of said Brush Electric Company who are in any way connected with said Thomson-Houston Electric Company, either as stockholders or otherwise, there are a large number of stockholders owning stock in said Brush Electric Company scattered through all the Eastern States, and that said stockholders will amount in number to nearly, if not quite, 150.

Affiant further says that the copies of agreements or contracts attached to the affidavit of said Roe, marked A, B and C., from the manner in which the same are referred to in said affidavit, are misleading, and it is apparently intended that it should be so. Affiant says that at the time of the incorporation of said Telegraph Supply Company in 1875, said Company was organized solely and only with the purpose in view of manufacturing telegraph supplies, annunciators, burglar, fire and other alarms and apparatus only of that description ; that at that time Mr. Brush had not made his inventions in relation to electric lighting, nor was said Telegraph Supply Company organized nor carried on with any intent or purpose of engaging at any time in the business of Manufacturing electric lighting apparatus. Said contracts A, B and C aforesaid with said William Kerr re-
late solely and only to inventions of the character first
175 above referred to, and at no time has it ever been claimed, either by said Kerr or by said California Electric Light

Company, or any other person, that said contracts conveyed any rights whatever or in any manner whatever to or under the patents of said Brush or the apparatus and supplies now manufactured by said The Brush Electric Company for electric lighting purposes; that the rights conveyed by said contracts A, B and C conveyed and were intended to convey the whole and entire right in the territory named which was possessed by said Telegraph Supply Company to the patents therein named. Affiant further says that it is not true that any right to any apparatus or patents other than those specifically named in the said contracts A, B and C was conveyed or intended to be conveyed, but, as stated in said letter of Feb. 2nd, 1878, Exhibit E, attached to Roe's affidavit, it was these and any improvements on any of the devices named in any of said patents, or for any inventions of the same general nature, and which devices related solely and only to telegraph supplies, annunciators, fire and burglar and other alarms; and that the subsequent contract entered into by and between said Telegraph Supply Company and said Kerr, and hereinafter to and its acceptance by said Kerr plainly show that such was the intent. Affiant says that he is not able to say whether said letter of Feb. 2nd, 1878, is a true and correct copy or otherwise, for the reason that the books and papers and correspondence of said Telegraph Supply Company were after that date destroyed by fire, and affiant has no way of verifying the truth of said Roe's statement.

Affiant further says that it is not true that said contract of Aug. 2nd, 1879, attached to said affidavit of said Roe,
176 marked Exhibit F, was made and entered into because said former contracts A, B and C were deemed informal, but, on the contrary, it was the intention and desire of said Kerr to obtain, as expressed in said contract, the right to sell the dynamo electric machines, lamps, carbons and similar apparatus then and not theretofore manufactured by said Telegraph Supply Company, and it is now and was always understood that the only rights acquired by said Kerr or said California Electric Light Company to such apparatus were under and by virtue of said contract, Exhibit F, aforesaid. Affiant further says that no rights are conveyed by said last named contract, or intended to be conveyed, except the right to sell apparatus of the character designated in said contract; that is to say, apparatus manufactured and sold by said Telegraph Supply Company or said Brush Electric Company, and no right to use the patents was conveyed, or intended to be conveyed, except such right as might be acquired by reason of such purchase of such manufactured apparatus, and that said Kerr and said California Electric Light Company were bound by the terms of said contract not to sell or deal in other apparatus than that so manufactured as aforesaid, nor

was any right to use in any manner, except as aforesaid, or interest in or to the use of said patents, conveyed, or intended to be conveyed, except the exclusive right to use apparatus purchased as aforesaid, and which would prevent said Telegraph Supply Company and said Brush Electric Company from selling its said apparatus in said territory to others than said Kerr or his assigns. Affiant says that this was so plainly the meaning and intent of said contract that in a contract of an exactly similar nature it was provided and stipulated in expressed
177 terms that said Telegraph Supply Company should not "grant or license any other parties to construct or sell any of said machines, apparatus or appurtenaces, except subject to the exclusive right to sell granted."

Affiant further says that it is not true, as stated by said Roe, that by the assignment of Aug. 21st, 1879, and the ratification thereof attached to his affidavit as Exhibit G and H from said Kerr to said California Electric Light Company that said Kerr assigned to said California Electric Lt. Co. all of all his right, title and interest in and to the last named, and all other agreements made between him and the Telegraph Supply Co. Affiant on the contrary says that said assignment and ratification refers solely and only to the agreement of Aug. 2nd, 1879, as is clearly shown by said assignment and ratification, and that so far as affiant is aware, or has any information, no assignment of any other contract than said contract of Aug. 2nd, 1879, was ever made to said California Electric Light Company, and at no time and in no manner has said California Electric Light Company ever intimated that it claimed, nor has it attempted in any manner whatever to claim any rights or privileges in electric lighting apparatus manufactured by said Brush Company except those rights conveyed to said Kerr by said contract of Aug. 2nd, 1879, and by him assigned as aforesaid.

Affiant further says that it is true that said California Electric Light Company has paid said Brush Electric Company large sums of money, and that it has from time to time given to said Brush Electric Company large and valuable orders, and has in former years been a valuable agent and customer for electric lighting apparatus, but affiant says that said purchases
178 by and the sales made by said California Electric Light Company have been to it a source of enormous profit, and as this affiant is informed and believes, has enabled it to pay large dividends to its stockholders and to largely increase and enhance the value of its capital stock and its property, and further that said profits were made alone and entirely by reason of the exclusive right granted, as hereinbefore stated, to sell electric lighting apparatus manufactured as aforesaid by said Telegraph Supply Company and said Brush Electric Company, and the

right to use the same by reason of such purchase ; that if said California Electric Light Company has invested or caused to be invested (but as to this affiant is not informed, except as stated by said Roe) large sums of money in electric lighting plants, such investment was not made because of any monopoly, or supposed monopoly, which said California Electric Light Company or said Brush Electric Company had of such electric lighting, but because of the known value and practical usefulness of electric lighting apparatus manufactured by said Brush Electric Company ; that in latter years competition is and has been active, and there are many electric manufacturing companies now manufacturing and furnishing electrical apparatus for electric lighting and investments are made because of and only induced by reason of such known value and practical usefulness as aforesaid.

That although affiant is and has been actively engaged, as aforesaid, in the electrical manufacturing business for a number of years, he has not known, nor does he now know or believe, that, as stated by said Roe, the Fort Wayne Company has practically no independent existence ; that is to say, that it is a corporation only in name, and that its capital stock is owned
179 and its business policy is dictated, and its officers and agents are controlled, by the Thomson-Houston Electric Co. On the contrary, this affiant says that said Fort Wayne Electric Company is now and has heretofore been an active competitor of the Brush Company, and, as affiant believes, also of the Thomson-Houston Electric Co., in the endeavor to make sales of electric lighting apparatus. Affiant further says that he is not informed, nor does he believe, as stated by said Roe, that said Thomson-Houston Electric Company has increased its capital stock to fifteen millions of dollars, or to any other sum, for the purpose of destroying and absorbing all other individuals or corporations engaged in the electric lighting business, including said California Electric Light Company, regardless of their rights. On the contrary, affiant says that the Brush Electric Company is now and always has been ready and willing to give aid and assistance in all proper manner in the endeavor to add to the wealth and prosperity of said California Electric Light Company ; and, as this affiant is informed and believes, said Thomson-Houston Electric Company, so far from having any intention to endeavor to destroy or absorb the business of said California Electric Light Company, has not intended, and does not now intend, to improperly interfere with its said business in any manner whatsoever.

Affiant further says that it is true that an action was brought, as stated, and a bill was filed by said California Electric Light Company against the Electric Improvement Company, in which

said action said Brush Electric Company, with its consent, was enjoined as a party plaintiff, but affiant says that said action was brought at the urgent solicitation of said California Electric Light Company, but that the bill filed in said action is not the bill which was verified by the President of said Brush
180 Electric Company, and was not the bill to which its assent was given, and that it is not responsible for some of the statements therein contained. Affiant further says that the application for a preliminary injunction in said action was made at that time against the wish or desire of said Brush Electric Company, because other cases of a similar character had been carefully prepared for trial at great expense to said Brush Electric Co. and for this reason it was considered necessary to protect the said Brush Electric Company in its sole rights in said litigation, so far as the same could thereby be affected, that the attorney engaged in the preparation of such other cases should take part in the hearing of said motion for preliminary injunction. Affiant further says that it has not always been the understanding and agreement between the Brush Electric Company and the California Electric Light Company that all infringers upon the Pacific Coast should be actively and earnestly prosecuted by both the Brush Electric Company and the California Electric Light Company, and that they should join in all actions for infringement of said Brush Electric Company's devices, and in and out of Court oppose all infringements of such devices, or that any such understanding and agreement was made by said Brush Electric Company recognized and fulfilled up to the time of the election of its Board of Directors in the month of January, 1891, as aforesaid. Affiant says that said Brush Electric Company did give its assent to the bringing of said action against said Improvement Company and the joining of its name as complainant herein, but that it has never in any manner whatever given its assent to the bringing of any other action than said above mentioned, nor in any manner given assent to its being joined
181 as a co-complainant therein. Affiant says that at the time assent to said action was given as aforesaid, said Brush Electric Company and its officers were not fully advised as to the relative rights of said Brush Electric Company and said California Electric Light Company, in respect to infringers of Brush patents, nor at that time had counsel determined as to what such relative rights were or are, but that as affiant is now advised, said California Electric Light Company have no equitable rights which would entitle it to join said Brush Electric Company as a party plaintiff, nor can it endanger its position in that respect by assenting to the use of its name as a co-complainant with said California Electric Light Company and said San Jose Light and Power Company; and affiant says that in the correspondence re-

ferred to in, and attached to, said affidavit of said Roe there is nothing to indicate in any manner whatever that it was agreed upon the part of the Brush Electric Company that all infringers on the Pacific Coast should be actively prosecuted by the California Electric Light Company, and that the Brush Electric Company would join in all such actions for infringement of the Brush patents, nor does it indicate in any manner whatever that said Brush Electric Company released its right to entirely control any litigation in which it might become involved as a party plaintiff.

Affiant further says that said Brush Electric Company, or its officers, are not advised as to the reason why the said San Jose Light and Power Company is included in said action as a party plaintiff; that if there has been any attempt upon the part of said California Electric Light Company to convey and assign to said San Jose Light and Power Company, it has been with-
182 out the authority or assent of said Brush Electric Company, and in violation of the terms of the contract hereinbefore referred to, conveying rights to electric lighting apparatus, and which contract expressly provides that no assignment of the contract, and then only in an entirety, should be made without the approval of said Telegraph Supply Company or its successor, The Brush Electric Company; that the only right the San Jose Company could acquire would be the right to use Brush apparatus purchased by it from said California Electric Light Company. Affiant says that said Brush Electric Company is and has been aware of the fact that the existence of a contract of some kind or character by and between said California Electric Light Company and said San Jose Company, but of the nature of which and the rights attempted to be conveyed, said Brush Electric Company was never advised. Affiant further says that he and other officers of the company, knowing of the existence of such contract, have asked said California Electric Light Company for copies of the same, which said California Electric Light Company have refused to furnish, stating in effect that said contract was a matter of business between itself and said San Jose Company in which they alone were interested, and to which information contained said Brush Electric Company was not in any matter entitled.

Affiant further says in reference to said letter of February 2nd, 1878, referred to in, and marked Exhibit E, and attached to said affidavit of said Roe, that it is not true as stated by said Roe that the rights thereby conveyed are, or were, intended to be an assignment of all patented inventions owned or controlled by the said Telegraph Supply Company pertaining to electrical matters, or of any and all patents of which it might become possessed, but on the contrary said letter states that under certain con-

183 ditions said Kerr should have the same right to sell any and all patented inventions pertaining to electrical matters, as said Supply Company would have had, *had the contracts not been made*, and going further it agrees to give him the sole and exclusive right to sell, and only to sell, in said territory, electrical apparatus manufactured by said Telegraph Supply Company. That said letter was written because of the desire on the part of said Kerr to obtain the right to sell electric lighting apparatus, and to interest capital in the effort to establish an agency on the Pacific Coast for the sale of such apparatus. That the agreement, Exhibit F, was executed in pursuance of the agreement contained in said letter, intending thereby to convey the exclusive right to sell apparatus manufactured as aforesaid, and that said executed agreement contained conditions practically as recited in said letter. That said contract was not executed until said Kerr had succeeded in interesting other parties in the endeavor to sell electrical apparatus so manufactured and to enable him to assign his rights, with the consent of said Telegraph Supply Co., in due form.

J. POTTER.

Sworn to before me by the said J. Potter, and by him subscribed to in my presence, this 28th day of March, A. D. 1891.

A. B. CALHOUN,
[SEAL.] *Notary Public.*

(Endorsed): Filed Oct. 12, 1891.

L. S. B. SAWYER, *Clerk.*

184 In the Circuit Court of the United States, in and for the Ninth Circuit and Northern District of California.

BRUSH ELECTRIC COMPANY,
CALIFORNIA ELECTRIC LIGHT COMPANY, and
SAN JOSE LIGHT AND POWER COMPANY,
Complainants.
vs.
ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE,
Respondent.
} In Equity, No. 11,205.

State of Ohio, County of Cuyahoga, Northern District of Ohio, *ss.*

M. D. Leggett, being duly sworn on oath, says that he is a citizen of the United States and a resident of the City of Cleveland, in the State of Ohio.

Affiant says that he is now a stockholder in said The Brush Electric Company, and that he was a Director thereof for many years prior to the 19th of January, A. D. 1891; that he was one

of the incorporators of the Telegraph Supply Company, and was for many years its President, and was after such incorporation an officer of said Telegraph Supply Company, and afterwards, after the change of name to that of The Brush Electric Company, was a Director of said The Brush Electric Company during all of which time and up to the time aforesaid. Affiant says that he is fully acquainted with the terms of all of the contracts entered into by and between said Telegraph Supply Company and William Kerr, referred to in the affidavit of said Roe, which affiant had read and with the contents of which he is acquainted,
185 and that at the time of the execution thereof was fully cognizant of the intent and agreement between the parties to such contracts.

Affiant says that it was the intent and agreement in the contracts attached to said Roe's affidavit and marked Exhibits "A, B and C," to convey to said Kerr the entire interest for the territory named, which said Telegraph Supply Company had in the patents therein named, and to convey to said Kerr the same right to manufacture, use or sell which was possessed by said Telegraph Supply Company; but affiant says that it was never the intent or agreement between the parties by any subsequent contracts entered into between said Telegraph Supply Company and said Kerr, or said California Electric Light Company, or between the said The Brush Electric Company and said California Company, to convey any rights under the patents owned or controlled by said Telegraph Supply Company or said Brush Company, but that it was always the intent to retain the entire and undivided right to such patents, and the only intent in entering into such contracts was to give the exclusive right and agency to sell apparatus which might be manufactured and sold by said Telegraph Supply Company or said Brush Company in the territory named in said contracts. That at the time of the execution of the contract between said Telegraph Supply Company and said William Kerr, dated the 2nd day of August, 1879, a copy of which is attached to said Roe's affidavit and marked Exhibit " ," said Telegraph Supply Company had received only a limited right from Charles F. Brush under his patents to manufacture and sell the apparatus covered by certain patents or applications therefor, as is shown by copies of the various contracts entered into by and between said Brush and said Telegraph Supply Company and said The Brush
186 Electric Company, hereto attached and marked Exhibit "A." And that at that time no right to use said patents had been conveyed, or was possessed by said Telegraph Supply Company, nor had said Telegraph Supply Company any authority, nor was it its intent to attempt to convey any such right to said Kerr, nor was that the agreement between the parties.

That at that time said Telegraph Supply Company was simply regarded as the agent of said Brush for the manufacture and sale of such apparatus, and that at no time did it part with its right to manufacture such apparatus, but that it did convey and it was intended to convey simply the right to sell the apparatus which it might manufacture under its license and contracts with said Brush.

Affiant further says that it is not true, as is stated in the affidavit of said Roe, that by the letter dated February 2, 1878, a copy of which is attached to the affidavit of said Roe and marked Exhibit "E," that it was intended to give the right to anything more than the exclusive right to sell apparatus which might be manufactured by said Telegraph Supply Company; nor was it any more than is stated in said letter than the exclusive right to sell any or all of our electrical manufactures in said territory, but that if an attempt was made to convey such a right by said letter, it was done without authority and without the knowledge of the officers of said company, who would have the right to make such a conveyance.

Affiant further says that he has read the affidavit of J. Potter filed herein and knows the contents thereof, and says from his own knowledge that the statements therein contained as to the transactions between said Telegraph Supply Company and said William Kerr and said California Electric Light Com-
187 pany are true, and as to the other things therein contained, some of them from his own knowledge of the business transactions of said Telegraph Supply Company and said The Brush Electric Company, and others, by reason of information conveyed to him because of his position as Director as aforesaid, he says that the same are true.

M. D. LEGGETT.

Sworn to before me, by the said M. D. Leggett, and by him subscribed in my presence, this 3rd day of April, A. D. 1891.

H. F. CARLETON,

[SEAL U. S. COMMISSIONER.] *U. S. Commissioner.*

188 This agreement, made this 27th day of July, A. D. 1886, by and between Charles F. Brush, of Cleveland, Ohio, party of the first part, and The Brush Electric Company, a corporation organized and doing business under the laws of the State of Ohio, party of the second part, witnesseth:

That whereas, said party of the first part and said party of the second part, the name of which was then The Telegraph Supply Company, entered into a written agreement on the 24th day of March, 1877, a copy whereof is as follows, to wit:

"This agreement concluded this 24th day of March, A. D. 1877, by and between C. F. Brush, of Cleveland, Ohio, party of the first part, and The Telegraph Supply Company, of said City and State, party of the second part, witnesseth: That said party of the first part having invented certain improvements in magneto or dynamo electrical apparatus, as fully set forth in the specifications of said invention, which he has drawn preparatory to obtaining letters patent of the United States therefor, does hereby grant to said party of the second part, the sole and exclusive right to manufacture and sell the above described improved apparatus (and all improved forms or improvements thereupon which may hereafter be made by him, as contemplated in Article 8), in all parts of the United States, during the full term of said letters patent, its re-issues or extensions, beginning at the date of this agreement on and in consideration of the following conditions:

(1.) Said second party shall, without expense to said first party, obtain (in his name) as soon as possible, letters patent of the United States for said invention, and shall perform the necessary labor attendant thereon. But all expense incident to the defense of said patent or patents, or to their protection against in-
189 fringement, shall be borne equally by the first and second parties, and no suit under this arrangement shall be commenced without their mutual consent, except at expense of the party commencing it.

(2.) Said party of the second part shall at once, and continuously throughout the term of this contract, use all reasonable diligence in manufacturing and supplying the market with said improved apparatus, and introducing it into the public notice, and into general use; and further, said manufacturing, advertising, selling, etc., shall be done entirely at the expense and risk of said second party, and said first party shall in no instance be liable for any loss or damage of any nature whatever which may be thereby incurred.

(3.) Said contracting parties shall jointly decide upon a retail cash selling price for each style, size and part of apparatus, which price shall not be deviated from by said second party without consent of said first party.

(4.) Said second party shall pay to said first party, his heir or assigns, as his royalty on each piece or part of apparatus manufactured by it, a sum of money equal to one-fifth (20 per cent.) of the retail selling price as above. In case more is obtained for a piece of apparatus than its usual price, then the amount actually obtained shall be regarded as the "retail selling price" in this instance; and if less is obtained with consent of first party, this amount shall be the one considered as above. The royalty on each piece or part of apparatus shall be due and payable when said piece or part is delivered to the purchaser or

user thereof, unless time is given the purchaser, with consent of first party, or it is otherwise agreed upon in special cases.

190 (5.) Said first party shall be regarded as agent of said second party for the sale of said apparatus in any or all parts of the United States, except when such sales would materially interfere with the interests of said second party, the design of the provision being to give the first party liberty to sell apparatus in any place or instance where such a sale would not be disadvantageous to the second party. For each sale which said first party may effect, he shall receive from said second party, in addition to his royalty, a commission to be agreed upon, or the same which it, the said second party, pay to other agents.

(6.) Said second party shall at all times keep a set of books in the usual way, in which a true account of all apparatus and parts of apparatus manufactured and sold or otherwise disposed of, shall be kept, which accounts and books shall at all times be open to inspection by said first party, or such representatives as he may designate. And further, said second party shall render to said first party a true monthly statement of said accounts.

(7.) "The inventor (said first party) shall furnish a design for each size and style of apparatus, which design shall not be deviated from by the manufacturer without his consent.

(8.) "Said first party shall continue (as far as he may deem advisable) to exercise his inventive genius and skill in still further improving and perfecting said apparatus; and such improvements or additions as may be made shall be patented, if deemed desirable or necessary by both parties, and shall come under and be subject to the conditions of this agreement the same as if constituting a portion of the original invention.

(9.) "Said first party shall make no sale of his patent,

191 or patents covered by this agreement, or any interest therein or portion thereof, without first offering the same to said second party, on the same terms which he proposed to offer other parties.

(10.) "In case a disagreement shall arise between the parties hereto as to the fulfillment of any of the provisions or terms of this contract, which cannot be settled by said parties, then the point in question shall be submitted to arbitration in the usual manner, and the decision thus arrived at shall be accepted as final in the instance in question. If said first party is adjudged to be aggrieved, he may at his option cancel this contract or compel its proper observance. If said second party is adjudged to be aggrieved, it shall be entitled to such remedy as said arbitration may adjudge just and proper.

C. F. BRUSH,
M. D. LEGGETT, L. S.
President Telegraph Supply Co.

Recorded Dec. 4, 1880."

And whereas, said contract was afterward modified by a further written contract between the same parties, which is in the words and figures following, to-wit:

Memorandum of agreement made this day by and between Charles F. Brush, of Cleveland, Ohio, of the first part, and The Brush Electric Company, formerly The Telegraph Supply Company, of Cleveland, Ohio, of the second part, supplementary to a contract between the same parties, dated March 24th, 1877, witnesseth:

First—That first party hereby extends the grant to second party in said original contract of the exclusive right to manufacture and sell the apparatus therein described, so as to include in said grant all apparatus for electric light and electro-
192 plating purposes (such as dynamo electric machines, lamps, carbons, etc.) already invented by first party, or that may be invented by him while said original contract remains in force. The term of said original contract is not, however, extended. The patents already obtained, and the applications for patents already made, that are covered by this agreement, are as follows:

Numbers.	*Dates.*	*Subject Matter.*
189,997	April 24, 1877	Dynamo machine.
196,425	Oct. 23, 1877	Copper-coated Carbons.
203,413	May 7, 1878	Armature.
203,412	May 7, 1878	Commutator.
203,411	May 7, 1878	Lamp.
8,716	May 20, 1879	Reissue of above.
212,183	Feb. 11, 1879	Adjusting Helix.
217,677	July 22, 1879	Teaser.
219,210	Sept. 2, 1879	Flexible Holder and Guide.
219,208	Sept. 2, 1879	Double-Rod Lamp.
219,211	Sept. 2, 1879	Resistance cut off.
219,213	Sept. 2, 1879	Winker Lamp.
219,212	Sept. 2, 1879	Gas Battery Lamp.
219,209	Sept. 2, 1879	Expansion Lamp Dash-Pot Rod.
224,511	Feb. 17, 1880	Dial.

There are also in the Patent Office thirteen pending applications relating to electric lights which are also to be included. The grant is hereby extended to cover the inventions above described, and all extensions, improvements or reissues thereof, and also all other inventions of similar character pertaining to dynamo-electric machines, or to electric lights, or electroplating apparatus, made by first party during the term of the original contract, as above contemplated.

Second—In the fourth article of said original contract, per-

taining to the payment of royalty to the first party on apparatus sold by second party, it is hereby understood and agreed that the first party will leave and forego all royalty on any apparatus sold by said second party, in good faith, in the usual
193 course of business, and with due business caution, for which payment cannot be collected nor the apparatus thus sold recovered.

Third—The last article in said original contract is hereby changed so as to read as follows: In case disagreement shall arise between the parties hereto, as to the fulfillment of the provisions or terms of this contract which cannot be settled by said parties, then the point in question shall be submitted to arbitration in the usual manner, and the decision thus arrived at shall be accepted as final in the instance in question. If either party is adjudged to be aggrieved, it shall be entitled to such remedy as said arbitration may adjudge just and proper.

In witness whereof, the parties have hereunto signed their names and affixed their seals, this first day of Sept., A. D. 1880.

CHARLES F. BRUSH,
THE BRUSH ELECTRIC COMPANY,
By G. W. STOCKLY, *V. P. & Tr.*
Cleveland, Ohio.

The Brush Electric Company, recorded December 4th, 1880.
Exd. A. N. C. F.
In presence of—
J. C. ALLEN,
JAMES GORDON.

And whereas, it is thought desirable by both parties, that the contract between them should be still further changed, and that said second party should compensate said first party for the use of the patents and patented apparatus mentioned in said contract, in a manner different from that provided in said contracts;

Now, therefore, in consideration of the sum of one dollar to each of said parties paid by the other, and the receipt of which is hereby acknowledged, and in further consideration of
194 the mutual promises and agreements hereinafter contained, the said parties do hereby covenant and ageee with each other, as follows:

First—That said agreements bearing date March 24, A. D. 1877, and September 1st, A. D. 1880, shall be treated as in full force and effect, up to and including the first day of September, 1884, and all rights and obligations of the parties, as to all matter and things accruing prior to that date shall be the same as if this agreement had not been made; but as to all matters and things occuring after said first day of September, 1884, said contracts shall be treated as of no force or effect whatever, but this agree-

ment shall be considered as in force from that date, and the rights and obligations of the parties shall be the same as if this agreement had been executed on that day.

Second—The said first party hereby promises and agrees that he will, on delivery to him of certificates for the capital stock of said second party as hereinafter provided, assign, transfer, and set over absolutely unto said second party, all of the patents mentioned in said contracts of March 24, A. D. 1877, and September 1st, A. D. 1880, and also the following patents :

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Numbers.	*Dates.*	*Subject Matter.*
234,456..	Nov. 16, 1880..	Automatic Cut-out Apparatus.
239,311..	March 29, 1881..	Reflector.
239,312..	March 29, 1881..	Reflector.
239,313..	March 29, 1881..	Current Governor.
260,650..	July 4, 1882..	Current Governor.
260,651..	July 4, 1882..	Thermic Regulator.
260,652..	July 4, 1882..	Dynamo-Electric Machine.
260,653..	July 4, 1882..	Secondary Battery.
260,654..	July 4, 1882..	Secondary Battery.
261,077..	July 11, 1882..	Electric Circuit System.
261,512..	July 18, 1882..	Secondary Battery.
261,995..	Aug. 1, 1882..	Secondary Battery.
262,533..	Aug. 8, 1882.	Process of making Elements.
263,757..	Sept. 5, 1882..	Straightening Carbon Rods.
263,756..	Sept. 5, 1882..	Secondary Battery Element.
263,758..	Sept. 5, 1882..	Process of making Carbon Rods.
264,211..	Sept. 12, 1882..	Secondary Battery.
266,089..	Oct. 17, 1882..	Secondary Battery Elements.
266,090..	Oct. 17, 1882..	Secondary Battery.
266,762..	Oct. 31, 1882..	Making Electrodes for Sec. Bat.
274,082..	March 13, 1883..	Secondary Battery.
274,904..	April 3, 1883..	Making Carbon Rod.
274,905..	April 3, 1883..	Secondary Battery Element.
275,985..	April 17, 1883..	Secondary Battery.
275,986..	April 17, 1883..	Secondary Battery.
276,155..	April 24, 1883..	Secondary Battery.
276,348..	April 24, 1883..	Element for Sec. Batteries.
281,175..	July 10, 1883..	Current Manipulator.
281,176..	July 10, 1883..	Measuring Amount Current Energy.
285,457..	Sept. 25, 1883..	Armature for Dynamo Machines.
286,259..	Oct. 9, 1883..	Process of forming Electrodes.
293,708..	Feb. 19, 1884..	Metal Mold Lubricating Material. Added by C. W. S., March 28, '87. C. F. B.
293,709..	Feb. 19, 1884..	Process of casting Metals.
293,710..	Feb. 19, 1884..	Mold for casting Metals.

293,711..Feb. 19, 1884..Manipulating Molds in Castings.
293,712..Feb. 19, 1884..Extracting Castings from Mold.
297,669..April 29, 1884..Apparatus for Electroplating.
302,319..July 22, 1884..Dynamo-Electric Machines.
310,876..Jan. 20, 1885..Armature for Dynamo Machines.
312,184..Feb. 10, 1885..Electric Arc Lamp.
312,807..Feb. 24, 1885..Armature for Dynamo Machines.
331,764..Dec. 8, 1885..Preparing Glass for Cementation.
335,269..Feb. 2, 1886..Electric Switch.
336,087..Feb. 16, 1886..Armature for Dynamo Machines.
337,298..March 2, 1886..Secondary Battery.
337,299..March 2, 1886..Secondary Battery.
343,886..June 15, 1886..Governors for Electric Motors.
293,718..Feb. 19, 1884..Lubricating Metal Molds.
9,410..Oct. 12, 1880..Reissue of 189,997.
10,544..Dec. 23, 1884..Reissue of 196,425.

196 And also such patents of similar nature for which applications are now pending, as may at the expense of said second party be obtained, and agrees that he will, at the expense of said second party, and upon its request, from time to time hereafter, execute all such further writings and assignments as shall be necessary or convenient to effectuate the intention of this agreement, and to convey the full and complete title to said patents, and the right to enjoy the same unto said second party under the laws of the United States, or the rules and requirements of the Patent Office.

Said first party further agrees that he will, during the active existence of said second party in its present line of business, and on a scale comparable with the business at present, and at its request in such instance, and at its expense, apply for United States patents for such inventions and improvements as he may hereafter make in :

1st. Dynamo Electric Machines, and parts thereof, and current regulating devices therefor.

2nd. Electric Lamps, both arc and incandescence, and parts thereof and fittings therefor.

3rd. Carbons, and the processes of their manufacture and devices peculiar thereto.

4th. Electric Motors, and parts thereof, and speed Governors therefor.

5th. Primary and secondary Batteries, and parts thereof, and the processes of their manufacture, and special devices therefor. Also, current regulating and controlling and metering devices for charging or discharging secondary Batteries.

6th. Multiple series circuit system for the distribution of electrical energy, and devices specially pertaining thereto.

197 7th. Thermo-Electric Generators.

8th. Electrical devices for retarding the movement of vehicles.

9th. Devices for making and breaking electric circuits.

10th. Electrostatic Accumulators.

11th. Electrical conductors, including cables, wires and means for making and insulating the same; also special constructions of cable for preventing induction; also conduits and conductors for underground lines.

12th. Devices for turning on and off and igniting gas.

13th. Induction coils.

14th. Lightning arresters.

15th. Rheostats.

16th. Applications of dynamo-electric generators to telegraphic purposes.

17th. Thermostats. And at the like request and expense will, by proper writing and assignments, assign, transfer and set over all such applications to said second party.

Third—In consequence of the premises, said second party has since the 1st day of September, A. D. 1884, paid to said first party the sum of 46,666 67-100 dollars, and in further consideration therefor said second party agrees that it will, before declaring any further dividends, cause its capital stock to be reduced from three millions of dollars to one million five thousand dollars of fully paid up stock, and that it will then, before any further dividends are declared or paid, and as expeditiously as possible, cause the amount of its authorized capital stock to be increased to two million of dollars; and that said first party shall then become the owner of five hundred thousand
198 dollars of said capital stock, being the full amount of such increase, and the same shall be paid and turned over to him, and certificates issued to him as stock fully paid for by the transfer of the patents aforesaid.

Fourth—It is further agreed that in addition to the payments hereinbefore provided for, said second party shall, before making any dividend, pay to the first party an amount not less than the one-fourth part of the whole sum proposed to be divided, to be applied upon the indebtedness now existing of said second party to said first party, and such payments to continue until said indebtedness shall be fully paid. This provision is not in any manner to affect the right which first party now has and shall continue to have to demand immediate payment of said indebtedness to him, although it is not anticipated that such demand will be made so long as reasonable large payments on account of

said indebtedness continue to be made from time to time, as heretofore.

(Signed): CHARLES F. BRUSH.
THE BRUSH ELECTRIC COMPANY,
By GEO. W. STOCKLY, *President.*
J. POTTER, *Treasurer.*

(Endorsed): Filed Oct. 12, 1891.
L. S. B. SAWYER, *Clerk.*

199 In the Circuit Court of the United States, in and for the Ninth Circuit and Northern District of California.

BRUSH ELECTRIC COMPANY,
CALIFORNIA ELECTRIC LIGHT COMPANY, and
SAN JOSE LIGHT AND POWER COMPANY,
Complainants,
vs.
ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE,
Respondent.
} In Equity No. 11,205.

State of New York, City and County of New York, Southern District of New York, *ss.*

George W. Stockly, being first duly sworn, deposes and says that he is a citizen of the United States, and a resident of the town of Lakewood, New Jersey, and is 47 years of age.

Affiant says that he has read the affidavit of George H. Roe, filed herein, and also the affidavit of J. Potter, and knows the contents thereof. Affiant says that he was one of the original incorporators of The Telegraph Supply Company in 1875, having occupied the offices of General Manager, Treasurer and Vice-President, and that, thereafter, was an officer and Director of The Brush Electric Company until the 19th day of January, 1891, having been for many years prior to said last named date its President and Chief Executive officer, and has been, and is now, one of its stockholders.

Affiant says that he is fully acquainted with the various transactions occurring between said Telegraph Supply Com-
200 pany and said William Kerr, and the California Company and the relations between the said California Company and said The Brush Electric Company during all the time that he was connected with the two companies aforesaid, and that the business and transactions with said Kerr and said California Company were carried on through and by him, or with his entire knowledge. Affiant says that said Telegraph Supply Company was incorporated only for the purpose and intent at the time of its incorporation to manufacture and sell telegraph sup-

plies, annunciators, burglar, fire and other alarms and apparatus of that description. That at that time there was no thought of engaging in the manufacture of electric lighting apparatus, for the reason that no inventions of that character had been made which were of any practical utility.

Affiant further says that it was the intent and agreement in the contracts attached to said Roe's affidavit, marked Exhibits "A, B and C," to convey to said Kerr the entire interest for the territory named, which said Telegraph Supply Company had, in the patents therein named, and to convey to said Kerr the same right to manufacture, use or sell, which was possessed by said Telegraph Supply Company.

That, thereafter, and after the assignments made as aforesaid to said Kerr, Mr. Charles F. Brush made certain improvements and inventions, and assigned to said Telegraph Supply Company, in the year 1877, certain right thereunder, practically constituting said Supply Company as the agent of said Brush for the sale of apparatus manufactured under his patents thereafter to be issued, but giving to said Supply Company no exclusive right, but reserving to said Brush the right to sell where sales made
201 would not interfere with the interests of said Supply Company, or where such sale might not be disadvantageous.

That thereafter in the year 1880 said right was extended to include additional patents and applications made by said Brush, and it was not until the year 1886 that said Brush assigned his entire right to said The Brush Electric Company and the letters patent obtained or to be obtained by him. That the original license to said Telegraph Supply Company was only the sole and exclusive right to manufacture and sell, and the legal title to said patents and inventions remained in said Brush subject to the terms hereinbefore mentioned.

Affiant further says that it was not the intent of said Telegraph Supply Company by its contract with said William Kerr, attached to said Roe's affidavit and marked Exhibit "F," to convey to said Kerr anything more than the right to sell electrical apparatus manufactured by said Telegraph Supply Company; nor could it convey any further or other right. That at no time was it the intent or agreement between said Telegraph Supply Company and said Kerr, or between said The Brush Electric Company and said California Company, to convey any exclusive rights under any of the patents of said Brush, or other patents owned or controlled by said Telegraph Supply Company, but it was only the intent (and that only could be conveyed) to convey the exclusive right by reason of such purchase to use such apparatus. Affiant hereto attaches and makes a part of his affidavit, marked Exhibit "A," copies of the various contracts and agreements by and between said Brush and said Telegraph Supply Company and said The Brush Electric Company.

Affiant further says that the affidavit of J. Potter,
202 which he has read as hereinbefore stated, is from his own knowledge believed to be true, and that the statements therein contained are true to the best of his knowledge and belief, and that at no time did the said The Brush Electric Company intend to give its assent, nor did it do so, to the bringing of actions against infringers by said California Electric Light Company, and that it is true, as stated in the affidavit of said Potter, that it did give its consent to the bringing of the joint action against the Electric Improvement Company, and it is also true that at that time the said The Brush Electric Company and its officers were not advised as to the relative rights of said California Electric Light Company and said The Brush Electric Company; nor had at that time counsel determined what such relative rights were or are, but that the consent to the bringing of such action by said California Company was done at the urgent solicitation of said California Company and to protect the rights of said Brush Company from anything which might occur in such an action to its detriment.

Affiant further says that it is true as stated in the affidavit of said Potter that said N. S. Possons was never a Director or an executive officer of either the said Telegraph Supply Company or said The Brush Electric Company; nor had he any means of knowing, nor was he consulted, nor did he give advice as to the policy or intent of said The Brush Electric Company in sustaining or supporting said California Electric Light Company in any proposed litigation; nor had he any opportunity of knowing what the general policy of said Company might be in the transaction of its business.

GEORGE W. STOCKLY.

203 Sworn to before me, by the said George W. Stockly, and by him subscribed in my presence, this fourth day of April, A. D. 1891.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year last above written.

[SEAL.] JOSEPH B. BRAMAN,

Commissoner of Deeds for the State of California, in and for the State of New York, resident in said City of New York.

OFFICES—Equitable Building, 120 Broadway, N. Y. City.
Branch and Residence, 1270

204 EXHIBIT A.

This agreement, made this 27th day of July, A. D. 1886, by and between Charles F. Brush, of Cleveland, Ohio, party of the first part, and the Brush Electric Company, a corporation organ-

ized and doing business under the laws of the State of Ohio, party of the second part, witnesseth :

That whereas, said party of the first part and said party of the second part, the name of which was then The Telegraph Supply Company, entered into a written agreement on the 24th day of March, 1877, a copy whereof is as follows, to wit :

"This agreement, concluded this 24th day of March, A. D. 1877, by and between C. F. Brush, of Cleveland, Ohio, party of the first part, and The Telegraph Supply Company, of said City and State, party of the second part, witnesseth : That said party of the first part, having invented certain improvements in magneto or dynamo electrical apparatus, as fully set forth in the specifications of said invention which he has drawn preparatory to obtaining letters patent of the United States therefor, does hereby grant to said party of the second part the sole and exclusive right to manufacture and sell the above described improved apparatus (and all improved forms or improvements thereupon, which may hereafter be made by him as contemplated in Article 8), in all parts of the United States, during the full term of said letters patent, its re-issues or extensions, beginning at the date of this agreement on and in consideration of the following conditions:

(1.) Said second party shall, without expense to said first party, obtain (in his name) as soon as possible, letters patent of the United States for said invention, and shall perform the necessary labor attendant thereon. But all expense incident to the defense of said patent or patents, or to their protection against infringement, shall be borne equally by first and second parties, and no suit under this arrangement shall be commenced without their mutual consent, except at expense of the party commencing it.

(2.) Said party of the second part shall at once and continuously throughout the term of this contract, use all reasonable diligence in manufacturing and supplying the market with said improved apparatus, and introducing it into the public notice and into general use, and further, said manufacturing, advertising, selling, etc., shall be done entirely at the expense and risk of said second party, and said first party shall in no instance be liable for any loss or damage of any nature whatever which may be thereby incurred.

(3.) Said contracting parties shall jointly decide upon a retail cash selling price for each style, size and part of apparatus, which price shall not be deviated from by said second party without consent of said first party.

(4.) Said second party shall pay to said first party, his heirs, or assigns, as his royalty on each piece or part of apparatus manufactured by it, a sum of money equal to one-fifth (20 per cent.) of the retail selling price as above. In case more is ob-

tained for a piece of apparatus than its usual price, then the amount actually obtained shall be regarded as the "retail selling price" in this instance; and if less is obtained, with consent of first party, this amount shall be the one considered as above. The royalty on each piece, or part of apparatus shall be due and payable when said piece or part is delivered to the pur-
206 chaser or user thereof, unless time is given the purchaser, with consent of first party, or it is otherwise agreed upon in special cases.

(5.) Said first party shall be regarded as agent of said second party for the sale of said apparatus in any or all parts of the United States, except when such sales would materially interfere with the interests of said second party, the design of the provision being to give the first party liberty to sell apparatus in any place or instance where such a sale would not be disadvantageous to the second party. For each sale which said first party may effect he shall receive from said second party, in addition to his royalty, a commission to be agreed upon, or the same which it, the said second party, pay to other agents.

(6.) Said second party shall at all times keep a set of books in the usual way, in which a true account of all apparatus, and parts of apparatus, manufactured and sold, or otherwise disposed of, shall be kept, which accounts and books shall at all times be open to inspection by said first party, or such representatives as he may designate. And further, said second party shall render to said first party a true monthly statement of said accounts.

(7.) "The inventor (said first party) shall furnish a design for each size and style of apparatus, which design shall not be deviated from by the manufacturer without his consent.

(8.) "Said first party shall continue (as far as he may deem advisable) to exercise his inventive genius and skill in still further improving and perfecting said apparatus; and such improvements or additions as may be made shall be patented, if deemed desirable or necessary by both parties, and shall come under and be subject to the conditions of this agreement
207 the same as if constituting a portion of the original invention.

(9.) "Said first party shall make no sale of his patent, or patents, covered by this agreement, or any interest therein, or portion thereof, without first offering the same to said second party, on the same terms which he proposed to offer other parties.

(10.) "In case a disagreement shall arise between the parties hereto as to the fulfillment of any of the provisions or terms of this contract which cannot be settled by said parties, then the point in question shall be submitted to arbitration in the usual manner, and the decision thus arrived at shall be accepted as

final in the instance in question. If said first party is adjudged to be aggrieved, he may at his option cancel this contract, or compel its proper observance. If said second party is adjudged to be aggrieved, it shall be entitled to such remedy as said arbitration may adjudge just and proper.

C. F. BRUSH,
M. D. LEGGETT, L. S.
President Telegraph Supply Co.

Recorded Dec. 4, 1880."

And, whereas, said contract was afterward modified by a further written contract between the same parties, which is in the words and figures following, to wit :

"Memorandum of agreement made this day by and between Charles F. Brush, of Cleveland, Ohio, of the first part, and The Brush Electric Company, formerly The Telegraph Supply Company, of Cleveland, Ohio, of the second part, supplementary to a contract between the same parties, dated March 24th, 1877, witnesseth:

First. That first party hereby extends the grant to
208 second party in said, original contract of the exclusive right to manufacture and sell the apparatus therein described so as to include in said grant all apparatus for electric light and electro-plating purposes (such as dynamo electric machines, lamps, carbons, etc.), already invented by first party, or that may be invented by him while said original contract remains in force. The term of said original contract is not, however, extended. The patents already obtained, and the applications for patents already made that are covered by this agreement are as follows :

Numbers.	*Dates.*	*Subject-matter.*
189,997	April 24, 1877	Dynamo-machines.
196,425	Oct. 23, 1877	Copper-coated Carbons.
203,413	May 7, 1878	Armature.
203,412	May 7, 1878	Commutator.
203,411	May 7, 1878	Lamp.
8,718	May 20, 1879	Re-issue of above.
212,183	Feb. 11, 1879	Adjusting Helix.
217,677	July 22, 1879	Teaser.
219,210	Sept. 2, 1879	Flexible Holder and Guide.
219,208	Sept. 2, 1879	Double Rod Lamp.
219,211	Sept. 2, 1879	Resistance Cut Off.
219,213	Sept. 2, 1879	Winker Lamp.
219,212	Sept. 2, 1879	Gas Battery Lamp.
219,209	Sept. 2, 1879	Expansion Lamp Dash-pot Rod.
224,511	Feb. 17, 1880	Dial.

There are also in the Patent Office thirteen pending applications relating to electric lights which are also to be included. The grant is hereby extended to cover the inventions above described, and all extensions, improvements or re-issues thereof, and also all other inventions of similar character pertaining to dynamo-electric machines, or to electric lights, or electro-plating apparatus, made by first party during the term of the orginal contract as above contemplated.

Second. In the fourth article of said original contract pertaining to the payment of royalty to the first party on apparatus sold by second party, it is hereby understood and agreed
209 that the first party will waive and forego all royalty on any apparatus sold by said second party, in good faith, in the usual course of business, and with due business caution, for which payment cannot be collected, nor the apparatus thus sold recovered.

Third—The last article in said original contract is hereby changed so as to read as follows: In case a disagreement shall arise between the parties hereto as to the fulfillment of any of the provisions or terms of this contract which cannot be settled by said parties, then the point in question shall be submitted to arbitration in the usual manner, and the decision thus arrived at shall be accepted as final in the instance in question. If either party is adjudged to be aggrieved, it shall be entitled to such remedy as said arbitration may adjudge just and proper.

In witness whereof, the parties have hereto signed their names and affixed their seals this first day of September, A. D. 1880.

CHARLES F. BBUSH,
THE BRUSH ELECTRIC COMPANY,
By G. W. STOCKLY, *V. P. & Tr.*
Cleveland, Ohio.

The Brush Electric Company, recorded December 4th, 1880, Exd. A. M., G. F.

In presence of—
J. C. ALLEN,
JAMES GORDON.

And whereas, it is thought desirable by both parties that the contract between them should be still further changed, and that said second party should compensate said first party for the use of the patents and patented apparatus mentioned in said contract in a manner different from that provided in said contracts.

Now, therefore, in consideration of the sum of one dol-
210 lar to each of said parties by the other, and the receipt of which is hereby acknowledged, and in further considera-

tion of the mutual promises and agreements hereinafter contained, the said parties do hereby covenant and agree with each other, as follows :

First. That said agreements bearing date March 24, A. D. 1877, and September 1st, A. D. 1880, shall be treated as in full force and effect up to and including the 1st day of September, 1884, and all rights and obligations of the parties as to all matters and things accruing prior to that date shall be the same as if this agreement had not been made ; but as to all matters and things occuring after said 1st day of September, 1884, said contracts shall be treated as of no force or effect whatever, but this agreement shall be considered as in force from that date, and the rights and obligations of the parties shall be the same as if this agreement had been executed on that day.

Second. The said first party hereby promises and agrees that he will, on delivery to him of certificates for the capital stock of said second party as hereinafter provided, assign, transfer, and set over absolutely unto said second party all of the patents mentioned in said contract of March 24, A. D. 1877, and September 1st, A. D. 1880, and also the following described patents :

211

Numbers.	*Dates.*	*Subject Matter.*
234,456	Nov. 16, 1880	Automatic Cut-out Apparatus.
239,311	March 29, 1881	Reflector.
239,312	March 29, 1881	Reflector.
239,313	March 29, 1881	Current Governor.
260,650	July 4, 1882	Current Governor.
260,651	July 4, 1882	Thermic Regulator.
260,652	July 4, 1882	Dynamo Electric Machine.
260,653	July 4, 1882	Secondary Battery.
260,654	July 4, 1882	Secondary Battery.
261,077	July 11, 1882	Electric Circuit System.
261,512	July 18, 1882	Secondary Battery.
261,995	Aug. 1, 1882.	Secondary Battery,
262,533	Aug. 8, 1882	Process of making Elements.
263,757	Sept. 5, 1882	Straightening Carbon Rods.
263,756	Sept. 5, 1882	Secondary Battery Element.
263,758	Sept. 5, 1882	Process of making Carbon Rods.
264,211	Sept. 12, 1882	Secondary Battery.
266,089	Oct. 17, 1882	Secondary Battery Elements.
266,090	Oct. 17, 1882	Secondary Battery.
266,762	Oct, 31, 1882	Making Electrodes for Sec. Bat.
274,082	March 13, 1883	Secondary Battery.
274,904	April 3, 1883	Making Carbon Rods.
274,905	April 3, 1883	Secondary Battery Element.
275,985	April 17, 1883	Secondary Battery.

275,986	April	17, 1883	Secondary Battery.
276,155	April	24, 1883	Secondary Battery.
276,348	April	24, 1883	Element for Sec. Batteries.
281,175	July	10, 1883	Current Manipulator.
281,176	July	10, 1883	Measuring Amount Current Energy.
285,457	Sept.	25, 1883	Armature for Dynamo Machines.
286,259	Oct.	9, 1883	Process of forming Electrodes.
293,708	Feb.	19, 1884	Metal Mold Lubricating Material. Added by G. W. S., Mar. 28, '87. C. F. B.
293,709	Feb.	19, 1884	Process of Casting Metals.
293,710	Feb.	19, 1884	Mold for Casting Metals.
293,711	Feb.	19, 1884	Manipulating Molds in Castings.
293,712	Feb.	19, 1884	Extracting Castings from Molds.
297,669	April	29, 1884	Apparatus for Electroplating.
302,319	July	22, 1884	Dynamo Electric Machines.
310,876	Jan.	20, 1885	Armature for Dynamo Machines.
312,184	Feb.	10, 1885	Electric Arc Lamp.
312,807	Feb.	24, 1885	Armature for Dynamo Machines.
331,764	Dec.	8, 1885	Preparing Glass for Cementation.
335,269	Feb.	2, 1886	Electrical Switch.
336,087	Feb.	16, 1886	Armature for Dynamo Machines.
337,298	March	2, 1886	Secondary Battery.
337,299	March	2, 1886	Secondary Battery.
343,886	June	15, 1886	Governors for Electric Motors.
293,718	Feb.	19, 1884	Lubricating Metal Molds.
9,410	Oct.	12, 1880	Reissue of 189,997.
10,544	Dec.	23, 1884	Reissue of 196,425.

212 And also such patents of similar nature, for which applications are now pending, as may, at the expense of said second party be obtained, and agrees that it will, at the expense of said second party, and upon its request from time to time, hereafter execute all such further writings and assignments as shall be necessary or convenient to effectuate the intention of this agreement, and to convey the full and complete title to said patents, and the right to enjoy the same unto said second party under the laws of the United States, or the rules and requirements of the patent office.

Said first party further agrees that he will, during the active existence of said second party in its present line of business, and on a scale comparable with the business at present, and at its request in each instance, and at its expense, apply for United States patents for such inventions and improvements as he may hereafter make in:

1st. Dynamo electric machines and parts thereof, and current regulating devices therefor.

2nd. Electric lamps, both arc and incandescence, and parts thereof and fittings therefor.

3rd. Carbons, and the processes their manufacture and devices peculiar thereto.

4th. Electric motors, and parts thereof, and speed governors therefor.

5th. Primary and secondary batteries and parts thereof; and the processes of their manufacture, and special devices therefor. Also current regulating, and controlling and metering devices for charging or discharging secondary batteries.

6th. Multiple series circuit system for the distribution of electrical energy, and devices specially pertaining thereto.

213 7th. Thermo-electric generators.

8th. Electrical devices for retarding the movement of vehicles.

9th. Devices for making and breaking electric circuits.

10th. Electrostatic accumulators.

11th. Electrical conductors, including cables, wires and means for making and insulating the same; also, special constructions of cable for preventing induction; also conduits and conductors for underground lines.

12th. Devices for turning on and off and igniting gas.

13th. Induction coils.

14th. Lightning arresters.

15th. Rheostats.

16th. Applications of dynamo electric generators to telegraphic purposes.

17th. Thermostats: and at the like request and expense will, by proper writings and assignments, assign, transfer and set over all such applications to said second party.

Third. In consequence of the premises said second party has since the 1st day of September, A. D. 1864, paid to said first party the sum of 46,666.67–100 dollars, and in further consideration therefor said second party agrees that it will, before declaring any further dividends, cause its capital stock to be reduced from three millions of dollars to one million five hundred thousand dollars of fully paid up stock, and that it will then, before any further dividends are declared or paid, and as expeditiously as possible, cause the amount of its authorized capital stock to be increased to two millions of dollars; and that said first party shall then become the owner of five hundred thousand dollars of said capital stock, being the full

214 amount of such increase; and the same shall be paid and turned over to him, and certificates issued to him as stock fully paid for by the transfer of the patents aforesaid.

Fourth. It is further agreed that in addition to the payments hereinbefore provided for, said second party shall, before mak-

ing any dividend, pay to the first party an amount not less than one-fourth part of the whole sum proposed to be divided, to be applied upon the indebtedness now existing of said second party to said first party, and such payments to continue until said indebtedness shall be fully paid. This provision is not in any manner to effect the right which first party now has, and shall continue to have, to demand immediate payment of said indebtedness to him, although it is not anticipated that such demand will be made so long as reasonable large payments on account of said indebtedness continue to be made from time to time as heretofore.

(Signed) CHARLES F. BRUSH.
THE BRUSH ELECTRIC COMPANY,
By GEO. W. STOCKLEY, *President.*
J. POTTER, *Treasurer.*

(Endorsed): Filed Oct. 12, 1891.
L. S. B. SAWYER, *Clerk.*

215 In the Circuit Court of the United States, in and for the Ninth Circuit and Northern District of California.

BRUSH ELECTRIC COMPANY,
CALIFORNIA ELECTRIC LIGHT COMPANY, and
SAN JOSE LIGHT AND POWER COMPANY,
Complainants,
vs.
ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE,
Respondent.
} In Equity. No. 11,205.

State of Ohio, Cayahoga County, Northern District of Ohio.

L. B. Le Vake, being duly sworn, on oath says :

That he is Assistant Secretary of said The Brush Electric Company. That he has held said office of Assistant Secretary prior to this time for about one year, and prior to that time has been in the employ of The Brush Company and occupied confidential relations to it and to its officers since the fifth day of April, A. D. 1882. That by reason of his position and the confidential relations enjoyed by him he has had access to the records of said company, has largely had charge of its correspondence, and has knowledge as to the general transaction of its business and of its relations with other companies, and with its various agents and agency companies. That he has read the affidavit of J. Potter, Treasurer of said Brush Electric Company, and knows the contents thereof, and from the knowledge obtained
216 aforesaid, says that the statements therein contained are true. L. B. LE VAKE.

Sworn to before me by the said L. B. Le Vake, and by him subscribed to in my presence, this 27th day of March, A. D. 1891.

[SEAL.] A. B. CALHOUN. *Notary Public.*

(Endorsed): Filed Oct. 12, 1891.

L. S. B. SAWYER, *Clerk.*

217 In the Circuit Court of the United States, in and for the Ninth Circuit and Northern District of California.

BRUSH ELECTRIC COMPANY,
CALIFORNIA ELECTRIC LIGHT COMPANY, AND
SAN JOSE LIGHT AND POWER COMPANY,
Complainants,
vs.
ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE,
Respondent.

In Equity. No. 11,205.

State of Ohio, County of Cuyahoga, Northern District of Ohio.

James J. Tracy, being duly sworn, on oath says :

That he is a resident of the City of Cleveland and State of Ohio, and that he is a stockholder of The Brush Electric Company, and was a Director in the same up to and prior to the 19th day of January, A. D. 1891, and took an active part in the business management of its affairs, and was its Vice-President for a number of years. That he was one of the incorporators of the Telegraph Supply Company and one of the Directors of said company, and was a Director of said Brush Electric Company from the time of the change of name from that of the Telegraph Supply Company to that of The Brush Electric Company up to said 19th day of January, A. D. 1891. Affiant says that he has read the affidavit of J. Potter, Treasurer of the said Brush
218 Electric Company and knows the contents thereof, and from his knowledge says that the statements therein contained are true.

JAS. J. TRACY.

Subscribed in my presence by said Jas. J. Tracy, and by him sworn to before me this 28th day of March A. D. 1891.

[SEAL.] WM. K. KIDD, *Notary Public.*

(Endorsed): Filed Oct. 12, 1891.

L. S. B. SAWYER, *Clerk.*

219 In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

THE BRUSH ELECTRIC COMPANY ET AL., *Complainants,*
vs.
THE ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE, *Defendant.* } No. 11,205.

Due service of notice of complainant, The Brush Electric Company's motion to dismiss the above entitled action, and of its affidavits on file on said motion, is hereby admitted.

April 13th, 1891.

LOUIS T. HAGGIN,
Solicitor for Defendant.

(Endorsed): Filed Oct. 12, 1891.
L. S. B. SAWYER, *Clerk.*

220 At a stated term, to wit, the July term, A. D. 1891, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the Court room in the City and County of San Francisco on Monday, the 12th day of October, in the year of our Lord one thousand eight hundred and ninety-one.

Present: The Honorable THOMAS P. HAWLEY, United States District Judge, District of Nevada.

THE BRUSH ELECTRIC COMPANY ET AL.
vs.
THE ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE. } No. 11,205.

It is ordered that the motion to restore to the calendar the motion herein to dismiss this cause be and the same is hereby granted, and the motion to dismiss continued to the 19th instant.

221 At a stated term, to-wit, the July term, A. D. 1891, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the Court room in the City and County of San Francisco on Monday, the 19th day of October, in the year of our Lord one thousand eight hundred and ninety-one.

Present: The Honorable THOMAS P. HAWLEY, United States District Judge, District of Nevada.

THE BRUSH ELECTRIC COMPANY ET AL.
vs.
THE ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE. } No. 11,205.

The motion herein to dismiss this cause came on this day to be heard. W. S. Wood, Esq., appeared for said motion, and M. M. Estee and J. H. Miller, Esqs., in opposition thereto. Thereupon affidavits were read, and after argument of the respective counsel, it is ordered that the further hearing of said motion be continued to the 26th instant, at the head of the calendar.

222 At a stated term, to wit, the July term, A. D. 1891, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the Court room in the City and County of San Francisco on Monday, the 26th day of October, in the year of our Lord one thousand eight hundred and Ninely-one.

Present: The Honorable THOMAS P. HAWLEY, United States District Judge, District of Nevada.

BRUSH ELECTRIC COMPANY ET AL.
vs.
ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE. } No. 11,205.

The hearing on the motion herein to dismiss this cause came on this day, counsel for the respective parties were present as on last Monday, and the arguments were resumed and concluded, and said motion was submitted to the Court for consideration and decision.

223 In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

THE BRUSH ELECTRIC COMPANY,
CALIFORNIA ELECTRIC LIGHT COMPANY, and the
SAN JOSE LIGHT AND POWER COMPANY,
Complainants,
vs.
THE ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE.
Defendant. } No. 11,205.

I hereby substitute William F. Herrin as solicitor for the defendant in the above entitled action, in my place and stead.

San Francisco, November 28th, 1891.

LOUIS T. HAGGIN.

The undersigned defendant in the above entitled action hereby consents to the foregoing substitution of solicitor.

November 30th, 1891.

ELECTRIC IMPROVEMENT CO. OF SAN JOSE,
By AUG. J. BOWIE, *President.*

I hereby accept the above substitution, and hereby appear as solicitor for the defendant in the above entitled action.

December 1, 1891.

WM. F. HERRIN,
Solicitor for Defendant.

(Endorsed): Due service of a true copy of the within substitution at the City and County of San Francisco, this first day of December, A. D. 1891, is hereby admitted.

M. M. ESTEE,
Solicitor for Complainant.

Filed Dec. 1, 1891.

L. S. B. SAWYER, *Clerk.*

224 At a stated term, to wit: the November term, A. D. 1891, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the Court Room in the City and County of San Francisco on Tuesday, the 1st day of December, in the year of our Lord one thousand eight hundred and ninety-one.

Present: The Honorable THOMAS P. HAWLEY, United States District Judge, District of Nevada.

THE BRUSH ELECTRIC COMPANY ET AL.
vs.
THE ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE. } No. 11,205.

On filing stipulation of counsel consenting thereto, it is ordered that William F. Herrin, Esq., be and he hereby is substituted as solicitor for the respondent herein in the place and stead of Louis T. Haggin, Esq.

225 At a stated term, to wit, the November term, A. D. 1891, of the Circuit Court of the United States of Ameria, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the Court room in the City and County of San Francisco on Monday, the 18th day of January, in the year of our Lord one thousand eight hundred and ninety-two.

Present: The Honorable THOMAS P. HAWLEY, United States District Judge, District of Nevada.

BRUSH ELECTRIC COMPANY ET AL.
vs.
ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE, } No. 11,205.

The motion that this cause be dismissed as to the Brush Electric Company, complainant herein, having been argued and submitted to the Court for consideration and decision, and the same having been duly considered, and an oral opinion of the Court having been delivered, it is ordered that said motion be and the same is hereby denied.

226 In the Circuit Court of the United States, in and for the Ninth Circuit, Northern District of California.

THE BRUSH ELECTRIC LIGHT COMPANY,
THE CALIFORNIA ELECTRIC LIGHT COMPANY,
THE SAN JOSE LIGHT AND POWER COMPANY ET AL.,
Complainants,
vs.
THE ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE,
Respondent.

Estee, Wilson & McCutchen and Langhorn & Miller, for the California Electric Light Co.; Lloyd & Wood and Henry P. Bowie, for the Brush Electric Co.

HAWLEY, J. (orally)—

This case was presented to me on a motion of the Brush Electric Light Company to strike out its name as a party plaintiff, because the bill had been filed without its authority or consent. A large number of affidavits were submitted on the motion, and a very extensive argument was presented by both sides.

It appears that the Brush Electric Company, the owner of certain patented improvements in electric arc lamps, has had considerable litigation in order to maintain its patent rights in the various States of the Union, and in a number of the States its patent had been sustained. After these proceedings in the Courts, a rival company—the Thomson and Houston Electric Company—bought up a majority of the stock of the Brush
227 Electric Company, and immediately stopped, or endeavored to stop, the litigation that was being conducted in different Courts by parties who held the exclusive agency from the Brush Electric Company to sell its patened rights.

I shall not attempt to make a statement of all the facts in this case. They are very novel, and somewhat complicated in many respects. I have carefully read all of the affidavits, and have examined all the authorities that were cited by the respective

counsel. It has been a serious question with me whether or not the affidavits do not show full authority and consent on the part of the Brush Electric Company to the California Electric Light Company, who holds an exclusive agency for the sale of the patented improvements of the Brush Electric Company, to bring this suit. It had given consent to bring several suits, and from the correspondence between said companies, it is a very close question whether the Brush Electric Co. has not given consent to bring any suits. It is unnecessary, however, to decide that matter.

It is sufficient to say that I have arrived at the conclusion, that whether the California Electric Light Company had express authority to bring the suit or not, it certainly has, under the law, the implied authority and power to bring the suit, in order to maintain and defend its rights. Since this motion was submitted, the same question has been decided in the Circuit Court of the District of Connecticut, by Judge Chipman, in a case almost identically the same as this, viz., The Brush Swan Electric Light Company *vs.* The Thomson-Houston Electric Company, 43 Fed. Rep., 224, wherein The Thomson-Houston Electric Company had bought up the control in the other corporation, and sought to prevent litigation of the same character in-
228 stituted here by the California Electric Light Company *vs.* The Electric Improvement Company of San Jose. In a discussion of the legal questions involved, he says: "If the interest of the owner, who has merely given his agent a license to sell within a specified territory, and who is still the owner of the substantial and important portion of the patent, can be, against his will and without the service of process, subjected to litigation and judicial decree, there is danger that the power of the licensee will be wantonly exercised. On the other hand, it is reasonably certain that a licensee can, in an action at law, use the name of the owner of the patent (Wilson *vs.* Chickering, 14 Fed. Rep., 917; Goodyear *vs.* McBurney, 3 Blatchf., 32; Same *vs.* Bishop, 4 Blatchf., 438); and it has also been declared with positiveness that a licensee of a patent cannot bring a suit in his own name, at law or in equity, for its infringement by a stranger (Birdsell *vs.* Shaliol, 112 U. S., 486, 5 Sup. Ct. Rep., 244). In this case the Cleveland Company is really a co-defendant, in view of the Thompson-Houston Company's controlling ownership of the stock; but, being a resident of Ohio, it cannot be served with process, as a co-defendant in this suit. Though it cannot be compelled to come into Court as a defendant, a Court of Equity looks at substance rather than form. When it has jurisdiction of the parties it grants the appropriate relief, whether they come as plaintiffs or defendants" (Littlefield *vs.* Perry, 21 Wall., 205), and places them according to the real positions which they respectively occupy in controversy.

The necessity of making the owner of the patent a party in an action for infringement is authoritatively declared in Waterman *vs.* McKenzie, 138 U. S., 252, II Sup. Ct. Rep., 334, as follows: "In equity, as in law, when the transfer amounts to a license only, the title remains in the owner of the patent, and suit must be brought in his name, and never in the name of the licensee alone, unless that is necessary to prevent an absolute failure of justice, as when the patentee is the infringer and cannot sue himself." "In this case it is true that the Cleveland Company is called upon to attack the acts of its controlling owner, and, in a certain sense, to sue for its own infringement; yet the two coporations are separate, legal entities; one can sue the other; and it is not necessary for the licensee to sue alone, in order to prevent an absolute failure of justice. When the owner is not the infringer, and therefore cannot be made a defendant, if the licensee is to have an opportunity to assert his alleged rights, he is at a great disadvantage unless he has the power of bringing a suit in equity in the name of the owner, though against his will. In my opinion he has, *prima facie*, such an implied power. Whether a court of equity would permit a wanton or unjust or inequitable use of the name of the owner of the patent by the licensee of the bare right to sell within a limited territory is a question which does not affirmatively arise, and upon which I express no opinion."

229

There is no pretense in this case that the California Electric Light Company is making a wanton, unjust or inequitable use of the name of the Brush Electric Company.

On the other hand, it clearly and affirmatively appears that it is absolutely necessary that it should have the power to bring this suit, in order to defend its rights, and protect its own interest under the contracts made with it by the Brush Electric Company. Any other rule, would, it seems to me, amount to a complete and absolute denial of justice, and no Court would be justified upon the facts in this case, in granting the motion. I think the opinion, from which I have read, is logical, sound and just, and ought to prevail. Upon the authority of that case, and the authorities therein cited, which are the same as were cited to me on the oral argument, the motion will be denied, and it is so ordered.

230

(Endorsed): Opinion. Delivered in open Court this 18th day of January, 1892.

L. S. B. SAWYER, *Clerk.*

231 In the Circuit Court of the United States for the Northern District of California.

THE BRUSH ELECTRIC CO.,
CALIFORNIA ELECTRIC LIGHT CO.,
SAN JOSE LIGHT AND POWER CO., } No. 11,205.
vs.
ELECTRIC IMPROVEMENT CO.

To the Hon. THOMAS P. HAWLEY, Judge of the Circuit Court of the United States for the Northern District of California.

The petition of the Brush Electric Co. for a rehearing of the motion made to dismiss it from the above cause respectfully shows:

That by the bill of complaint and the affidavits on the part of the California Electric Light Co. it is stated: 1st. That the California Electric Light Co. is only the licensee of the Brush Electric Co. The language of the bill is as follows:

Sub. 5. "The Brush Electric Co. granted to your orator, the California Electric Light Co., an *exclusive license* to use, rent, sell and vend, to others for use and sale, the inventions described in letters patent No. 219,208, for California, Oregon, Washington and Nevada.

That afterwards the California Electric Light Co. granted and assigned *an exclusive license* to do likewise to the San Jose Brush Electric Co. for the City of San Jose.

That then in turn the San Jose Brush Electric Co.
232 granted and assigned *all its rights* for the City of San Jose to the San Jose Light and Power Co.

The bill further states that the patent is owned by the Brush Co., and that it has expended large sums of money in the manufacture of its patented inventions, and that it, the Brush Electric Company, and its co-plaintiff, the San Jose Light and Power Co., have been and now are being injured by the defendant.

The bill nowhere states that the California Electric Light Co. has been injured, or that it is being injured, in any way or manner by any act done or threatened, by the defendant.

The *sole purpose* of the bill is to restrain the defendant from infringing the patent of the Brush Co. in the City of San Jose; it is not alleged that any attempt has ever been made by defendant to infringe this patent elsewhere than in San Jose.

The right of the California Electric Light Co. to use the name of the Brush Electric Co., generally, in suits to prevent an infringement of this patent, is not involved in this action or motion.

The sole question is, Can the Brush Electric Co. in this suit be forced by its licensee to unite with an assignee of a part of an unassignable license, to prevent an infringement and invasion

of property rights, in which neither the licensee nor its assignee have any interest or claim ?

Obviously neither the California Electric Light Co. nor the San Jose Light and Power Co. has any equity or claim in this suit as against the Brush Co., or against the defendant ; for it is manifest by the Bill of Complaint, which imports truth against the California Electric Light Co., at least.

233 1st. That the California Electric Light Co., before this suit was begun, had divested itself as far as it could of all of its rights in San Jose by assigning that part of its exclusive license to its co-plaintiff, the San Jose Light and Power Co.

2nd. That by its act of assignment it is estopped from disputing the right of its co-plaintiff, the San Jose Light and Power Co., to the entire territory of San Jose.

3rd. That this San Jose co-plaintiff, unless the Brush Co. has either authorized or ratified this assignment of its license, the California Electric Light Co. has no rights, claim, demands or equities whatever against either the patent owner, the Brush Co., or any one else.

The affidavits of Mr. Roe, the Secretary of the California Electric Light Co., and the other affidavits introduced on its behalf, have no relevancy to the suit at bar, except to show that the California Electric Light Co. bought of the Brush Co. The statement of the enormous expense and the energetic display made by the California Electric Light Co. over the States of California, Nevada, Oregon and Washington is not in the least pertinent, as the bill is confined exclusively to wrongs done and approved at San Jose ; and both the affidavits and the bill are silent as to any expense incurred or wrong suffered by the California Electric Light Co. at San Jose. Nay, it affirmatively appears by both that the California Electric Light Co. has transferred all its rights and interest over the district of San Jose, and has no longer any rights whatever there.

On page 8 of Roe's affidavit occurs the only reference therein to the City of San Jose.

And the language of Roe is as follows :

234 "The California Electric Light Co. has caused to be invested large sums of money in Brush Electric Lighting apparatus, in the City of San Jose, Sacramento, etc."

Again at the end of the page :

"That in the City of San Jose, there has been invested by and through the *influence* of the California Electric Light Co., in an electric lighting plant, for the use of the devices referred to in the agreement between the Brush and California Electric Light Co., the sum of $100,000."

Your Honor will notice that not one word can be found in any of the affidavits, or in the bill, that the California Electric Light

Co. has ever invested one dollar in San Jose, or that it or its rights have ever been disturbed, or that it has any rights there.

On page 9 of same affidavit, the same affiant says, after enumerating the acts of infringement of defendant, "Which acts of infringement have been and are, a serious and irreparable injury to the business of the Company now acting under the authorization of the California Electric Light Company."

It will be noticed that nothing is said about any injury to the California Electric Light Co.

The only injury is to the business of another corporation, which is the real party in interest, and the real plaintiff before the Court; "these two companies are separate legal entities."

The rest of the affidavit is exclusively devoted to matters irrelevant to the present case, and is only an emphatic eulogy of the energy of the California Electric Light Co., as displayed on the Coast; it tells what it has done in places other *than San Jose;* of the money it has invested in places *other than San Jose;* of the plants it has installed in places other than *San Jose.*

235 But yet *San Jose* if the only place the present bill is aimed at, and is the very place where the California Electric Light Co. affirmatively asserts it has invested nothing, has no rights and has suffered no injury.

Every injury stated in the affidavit not relevant to the matters stated in the Bill and not confined to to *San Jose* is necessarily "*res inter alios acta.*"

On page 16 of same affidavit, the affidavit further states:

"That the California Electric Light Co, by reason of the fact that it holds the *exclusive license* to use and sell the Brush inventions on this Coast, &c."

Again:

"That there has always been an understanding and agreement between the Brush Electric Co. and the California Electric Light Co., that all infringers on this coast should be actively prosecuted by both of them, and that they should join in all actions for infringement."

It is apparent at once that the affiant does not say that a third party, not in privity with the Brush Co., can use its name in all suits. And it is equally obvious that the California Co. can not use the name of the Brush Electric Co. unless the California Electric Light Co. is in some way injured, and is itself entitled to redress.

On page 17 of the affidavit also are stated the energetic acts of the Brush Co. in aiding the California Electric Light Co. in its suit against the Electric Improvement Co. This seemed to impress your Honor as evidence of an undoubted consent to the use of the name of the Brush Electric Co. in any litigation touching its patents on this Coast. Your honor will observe, how-

ever, the marked difference between that case and the one
236 at bar, and also that the inferences from that case are not even persuasive in this for these reasons:

In the suit of the Brush Co. and California Electric Light Co. *vs.* The Electric Improvement Co. there were only two parties plaintiff, and the California Electric Light Co. had not parted with its right to the district of San Francisco, the scene of the unlawful acts of defendant, and had not assigned its exclusive license over San Francisco to another, but was the *real party* in interest and had been seriously injured by the infringement of defendant.

In the present suit the California Electric Light Co. is not the real party in interest, and can not be, for long before any of the acts complained of in the bill had been done, it had assigned its exclusive license over the city of San Jose to the San Jose Brush Electric Co., who is not even a party to the present bill; and it is not claimed in either the bill or in the affidavits of the said California Electric Light Co., that the defendant has either infringed, or threatens to infringe elsewhere than in San Jose. The measure of damages must be confined to the torts perpetrated in San Jose, and with these the California Electric Light Co. can have no concern because of its prior transfer of all of its right and control over this district of San Jose.

Comparing attentively that case with the one at bar, it becomes manifest that even if the Brush Electric Co. either expressly or impliedly has given its consent to the use of its name along with the California Electric Light Co., to restrain infringements and to collect damages therefor, in districts over which the California Electric Light Co. has an exclusive license, and where it has been and can be injured, it is a *non sequitur* that the like consent can be inferred in a district where the California
237 Electric Light Co. has not been and can not be injured, and over which it has no license. Were it otherwise, the California Electric Light Co., against the will of the Brush Electric Co., might sue in the Circuit Court for the State of Illinois for an infringement in the City of Chicago, a place over which it has no license, and where it cannot be injured. And yet we would not have the right to be dismissed from the bill, and would be forced to maintain the suit, although it was clear on the face of the bill that the California Electric Light Co. had suffered, and could suffer, no injury, and had no concern nor interest in the district of the State of Illinois.

Substitute for the State of Illinois the City of San Jose, and the case at bar and the illustration becomes identical.

But, urges the California Electric Light Co., this defect is obnoxious to a demurrer, or some other defense of the defendant. This, however, is not true, for the suit would lie in the name of

the Brush Co. alone; for if the California Electric Light Co. has the right to join us at all, it has an equal right to use our name alone, and the defendant cannot question it, as that is a matter between the two companies. And, to carry out the illustration further, the California Co. could farm out the right to use our name to any other company in any other district, and join us and itself as plaintiffs with the third company; and if we moved to dismiss the bill as to us, the California Co. could successfully resist our motion by filing an affidavit showing that it was an exclusive license in California, had invested large sums of money there in the inventions of the Brush Co.; that it had authorized the joiner of the Brush Co. with the third company, and that it,

238 the California Co., would be seriously injured if further infringements in Chicago were permitted. We say that this could be done, although the bill was silent as to any injury to the California Electric Light Co, and it affirmatively showed that it had no rights, or had parted with all its rights, over the district where the wrongs complained of were done, and that the sole injury was to this third company.

There was absolutely no showing that the Brush Electric Co. ever authorized the California Electric Light Co. to assign its exclusive license or any part of it to another, nor does the bill even claim it.

Nor was there any showing that the Brush Electric Co. ever ratified this act of the California Electric Light Co.

The contract under which the California Electric Light Co. is acting and the sole charter of all its rights in the premises begins on page 29 of the affidavit and is marked Exhibit "F," dated August 2nd, 1879.

In this contract the predecessor of the Brush Electric Co. granted to Kerr, the assignor of the California Electric Light Co. and his *assigns* the exclusive right to use and sell, &c., the inventions controlled by it in certain States, but—

In the sixth section of said contract it is agreed that all the covenants and agreements herein shall extend to the administrators and assigns of said party of the 2nd part provided they are responsible parties and *are approved* by the predecessor of the Brush Electric Co.

On page 33 occurs the assignment by Kerr to the California Electric Light Co. whereby he assigns his entire license.

To this assignment the Brush Electric Co. consented.

239 Your Honor will notice two conspicuous features in this contract, viz.:

1st. The contract only permits a assignment of the license in an *entirety* and not in parts or over part of the territory.

2nd. That the right of approval is reserved to the owner of

the patent before any assignment to any parties can be valid or binding on said owner.

And it is beyond question from all the affidavits that the Brush Electric Co. never consented to or approved this assignment to the San Jose Brush Electric Co. nor the assignment to the San Jose Light and Power Co. And also that the assignment by the California Electric Light Co. was not of its license, as an entirety, but only of a part, viz.: for the Cities of San Jose and Santa Clara.

These are the facts as s own by both parties on this motion.

And we are sure your Honor did not note the marked distinction between the case at bar and that of the Brush-Swan Electric Light Co. *vs.* Thomson-Huston Electric Co., 48 Fed. R., 224.

In the case in 48 Fed. R., the Brush-Swan Co. had the exclusive license throughout a certain territory, and had not parted with any part of its license, nor had it assigned any of its rights over any part of its territory, and within this territory the defendant was infringing. By the acts of defendant the Brush-Swan Co. was injured in its rights which it had maintained intact. The gist of the decision was that unless the Brush-Swan Co. had the power of using the name of its licensor, the Brush Electric Co., it would be deprived of an opportunity to assert its alleged rights.

The wrongs done by defendant were in the territory controlled by the licensee, the Brush-Swan Co. But suppose the Brush-Swan Co. had parted with its license as to a part of this
240 territory, and these wrongs had been inflicted in that part which it had granted to another, as was done in the case at bar, clearly, then, it would have had no rights to assert, as it had divested itself of them, and the reasoning of the decision would not apply, and the Brush Co. would have had a right to be dismissed.

We are confident that your Honor did not notice this wide difference between the case at bar and the case in 48 Fed. R., and equally sure that had it been called more prominently to your attention our motion would have prevailed.

It will also be noticed that there is no affidavit on behalf of the real plaintiff, the San Jose Light and Power Co., on file, and there is no claim on its part that it has any right whatever to join the Brush Electric Co. as a co-plaintiff.

The California Electric Light Co. alone insists on our remaining in the suit, and since it has no rights in this particular suit, even if it has elsewhere on the coast, let us examine the law and see if it can sell the use of the name of the Brush Electric Co. to any one it please.

Your Honor seems to have rested your decision on the case of Brush-Swan Electric Light Co. *vs.* Thomson-Houston Electric Co., 48 Fed. R., 224.

And we have already shown that the facts in that case and the one at bar are vastly different.

And we are sure that we can convince your Honor that the reasoning there cannot apply here, unless :

1st. The California Electric Light Co. has the absolute right to assign its license, either in part or in its entirety.

2nd. The California Electric Light Company has rights which it can assert.

3rd. The San Jose Light and Power Co. has the right to the use of our name, and claims that right.

241 The contract marked Exhibit " F " and attached to Mr. Roe's affidavit, page 30, as before stated, says:

The party of the 1st part (the Brush Electric Co.) gives and grants unto the party of the second part (Kerr, the assignor of the California Electric Light Co.), and his assigns the exclusive right, etc.

But after many mutual covenants, limitations and stipulations at the conclusion thereof, says, by way of limiting the rights of any assignees, that they must be responsible parties, and are *to be approved by* the party of the first part.

And in Exhibit " G," page 33, of same affidavit, Kerr assigns to the California Electric Light Co., and expressly omits the words *assigns or successors*, and to this the Telegraph Supply or Brush Co. assented.

And in comparing these two contracts, which are the only sources of the rights of the California Electric Light Co., it becomes apparent that the right of assignment of the license conferred by the Brush Electric Co. is not expressly given.

This was the very construction given to these contracts by all the parties to them; else why was it thought necessary for the Brush Electric Co. to give its express consent to the assignment from Kerr.

In the case of District of Columbia *vs.* Gallagher, 121 U. S., 505, the Court say:

" When in the performance of a written contract both parties put a practical construction upon it, this construction will prevail over even the language of the contract.

242 But the language is too plain to need this decision, for, unless the Brush Electric Co. reserved the right of approval as a condition precedent to the exercise of its licensee's right of assignment, this last clause of the contract, known as Exhibit " F," becomes meaningless, and, by the failure or refusal of the Brush Electric Co. to approve of any assignment its license may elect to make, this licensee could assign to any one, however inefficient, irresponsible or inimical to the licensor, and thus destroy the very object and purpose which the patentee had in view when it granted this license; nay, the as-

signee, because of this refusal, would be released from any obedience to any of the covenants for the performance of which the licensee had solemnly pledged his good faith and word, but the law will tolerate no such violation of the clear intent and meaning of the parties.

The Civil Code of California says :

Sec. 1,366. "A contract must be interpreted so as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful."

Sec. 1,641. "The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other."

Again, Pollock on Contracts, page 435, says that—

"Greater regard is to be had to the clear intent of the parties than to any particular words which they may have used in the expression of their intent."

The cardinal rule in the construction of all contracts is that the intention of the parties must control, and the whole contract must be considered in arriving at that intention.

To give a fair and reasonable interpretation to this con-
243 tract, it must be conceded that from its language and stipulations, as well as the conduct of the parties, the intention of the parties was that Kerr, the licensee of the Brush Electric Co., did not have and was not to have the right to assign his license without first getting the approval of his licensor, the Brush Electric Co. That being so, what right of assignment has his assignee, in the absence of this approval ?

Oliver *vs.* Rumford Chemical Wks., 109 U. S., 76, was an action at law for infringement of a patent.

The Rumford Chemical Works was the patentee, and it granted a license to Morgan. Morgan died. His administratrix sued Oliver, in the name of the Rumford Chemical Works, for infringement. The word assigns was not in the grant of the license to Oliver. The Court, on pages 82 and 83, said :

Morgan was a mere licensee. "This being so, the instrument of license is not one which will carry the right conferred to any one but the licensee personally, unless there are express *words to show an intent* to extend the right to an executor, administrator or *assignee,* voluntary or involuntary. In the case of Troy Iron and Nail Factory *vs.* Corning, cited in the above case, the language is :

"A mere license to a party, without having his assigns or equivalent words to them, showing that it was meant to be assignable, is only a grant of a personal power to the licensee, and is not transferable by him to another." And the language in 109 U. S., page 83, is most appropriate, in view of the agreements entered

into with Kerr, which equally bind the California Electric Light Co. It is as follows:

"The right is granted to Morgan alone, to him personally, with an agreement by him that he will enter on the manufacture of the self-raising flour, and he will use all his business
244 tact and skill to introduce and sell the flour. It is apparent that licenses of this character must have been granted to such individuals as the grantor chose to select, because of their personal ability or qualifications to make or furnish a market for the materials, all of which was to be purchased from the grantor."

Tutle *vs.* La Dow, 7 N. Y., Supplement 277, was an action for specific performance of a contract of license made between the defendants, the Wheeler & Melick Co. and defendant La Dow with certain other parties who had assigned to plaintiff.

There were no express words of assignability in the license. The Court said:

The rule seems to be that in order to make a mere license assignable, it must contain express words to that effect and specific performance was refused.

Suppose that the San Jose Light and Power Co. had sued the Brush Co. to enforce specific performance, and the Brush Co. had appeared, could it have prevailed?

And just here let us again call attention to one of the pregnant facts of this case, viz., that no objection nor affidavit has been made by the San Jose Light and Power Co. against our right to be dismissed from this bill, nor has any claim been made by it that because it is the assignee of the California Electric Light Co., it has any rights as against us, or that we ever approved their assignment.

Nor can the fact that the California Electric Light Co. has some interest in the San Jose Light and Power Co. give it any rights.

Locke *vs.* Lane & Bodley Co., 35 Fed. R., 289.

2nd. But even if the California Electric Light Co. has succeeded to the rights of Kerr, and Kerr had the power to
245 assign, yet this license would even then be assignable only as an entirety. This privilege cannot be subdivided, nor farmed out to the highest bidder who, to the injury of the Brush Co., may seek for only parts of the territory granted to the California Electric Light Co.

Walker on Patents, 310, p. 239 (2nd Ed.)
Brooks *vs.* Byam, 2 Story, 545.
Consolidated Fruit Jar Co. *vs.* Whitney, 1 Bann & Ard., 356

The license granted by the California Electric Light Co to the San Jose Co.'s was only an exclusive right to a part of its district, to wit : for the cities of San Jose and Santa Clara only.

Since the San Jose Light and Power Co. has no license from the Brush Electric Co., is not in privity with it, and is exercising its powers in San Jose in direct violation of its rights, and is itself an infringer, by what right can it call upon the Brush Co. to allow the use of its name to repress another wrong doer ?

The California Electric Light Co. may insist that, even if it has wronged its co-plaintiff, the Brush Electric Light Co. and does not come into Court with clean hands, and is not directly injured by the infringement of defendant, it can yet use the Brush Electric Co.'s name in this suit, because it is indirectly injured.

This is not the law, however.

A Court of Equity will not interpose by injunction for the protection of one who seeks relief indirectly through the equities of other parties, on which they themselves do not insist.

Roberts *vs.* Bozen, 3 D. J., Ch., 113.

246 The injury must be direct, to enable the California Electric Light Co. to maintain this suit. But we have seen that it has no rights to assert against defendant, and hence it cannot force us to sue when it has suffered nothing. Nor can the other company force us into this litigation, as we do not recognize it; it has no rights against us, it has no interest in our patent.

In Waterman *vs.* McKenzie, 29 Fed. R., 316, and affirmed 138 U. S., 253, the Court distinctly held, on the plea of defendant, that an injunction will not be granted where the plaintiff has no interest in the patent. Now, clearly the San Jose Light and Power Co. neither has an interest, nor is a licensee of the patent of the Brush Co.

And in Moore *vs.* Marsh, 7 Wal., 521, the Court, speaking of a grantee of a territorial right for a particular district, said, it is equally well settled he may sue in his own name for invasion of the patent in that territorial district, as no one *else is injured by any such infringement.*

And lower down on same page :

" Suits for infringements in *such districts*, if committed subsequently to the grant can only be brought in the *name of the grantee*, as it is clear that no *one can maintain an action until his rights have been invaded, nor until* he is *interested in the damages to be recovered.*"

If the grantee of a territorial right cannot sue unless the invasion of the patent is in his own district, then clearly a mere licensee has no higher right, and cannot join the patentee in a

suit for an infringement in a district over which he has transferred his rights, and for which he can recover no damages.

247 Thus neither of the other co-plaintiffs has any right in San Jose, the place of defendant's tort, and hence can assert none, the existence of which is the foundation of the decision in 48 Fed. R.

But the California Electric Light Co. says that if its assignment to the San Jose Co. is void, the right is still vested in it.

But this is not correct. The assignment is voidable at the instance of the Brush Electric Co., not void, and is binding on the California Co. It cannot repudiate its own contract, and after violating its agreement with us, at its own will and pleasure cancel what it has sold to another. It can not take advantage of its own wrong.

In the decision of the motion your Honor made no allusion to the points raised in this petition, but seemed to rely on the case in 48 Fed. R., which, at first impression, seems to be like the one at bar; but when your attention is called to the distinction elaborated in this petition it will be seen at once that it cannot be of any authority against our motion.

And in view of the facts and the law argued herein, and that the California Electric Light Co. has long since disposed of all its rights over the disputed territory, and has none to assert, either against the defendant or against us, and the San Jose Light and Power Co. has neither any claim against us, nor makes any, we earnestly ask for a rehearing of our motion to be dismissed from the bill, to enable us more forcibly to suggest the marked difference between all the cases cited by the learned counsel for the California Electric Light Co. and this one at bar; and to discuss especially the case in the 48 Fed. R., of the Brush-Swan Co. *vs.* Thompson-Houston Co., which we have not had any

248 opportunity to distinguish.

EDWARD P. COLE,
J. E. RUNCIE,
HENRY P. BOWIE,

Solicitors and counsel appearing specially for the Brush Electric Co., on the motion to dismiss and for this rehearing.

(Endorsed): Service by copy of the within petition is hereby admitted this 27th day of January, 1892.

ESTEE, WILSON & McCUTCHEN,
Solicitors.

Filed January 29, 1892.

L. S. B. SAWYER, *Clerk.*

249 At a stated term, to wit, the February term, A. D. 1892, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the Court room in the City and County of San Francisco on Monday, the 14th day of March, in the year of our Lord one thousand eight hundred and ninety-two.

Present: The Honorable THOMAS P. HAWLEY, United States District Judge, District of Nevada.

THE BRUSH ELECTRIC COMPANY ET AL.
vs.
THE ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE. } No. 11,205.

The petitioner for a rehearing of the motion for an order to dismiss the above entitled suit as to the Brush Electric Company came on this day to be heard. E. P. Cole and H. J. Bowie, Esqs., appeared for said complainant and petition, and M. M. Estee and J. H. Miller, Esqs., in opposition to said petition, and was argued by the respective counsel and submitted to the Court for consideration and decision. And the same having been duly considered, it is ordered that said rehearing of said motion be and the same hereby is denied.

250 In the Circuit Court of the United States, in and for the Ninth Circuit and Northern District of California.

BRUSH ELECTRIC COMPANY,
CALIFORNIA ELECTRIC LIGHT COMPANY, and
SAN JOSE LIGHT AND POWER COMPANY,
Complainants,
vs.
ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE,
Defendant. } No. 11,205.

To the defendant and its attorneys in the above entitled action:

Please take notice that the petition for rehearing of motion to dismiss as to the Brush Electric Company, one of the plaintiffs in the above entitled action, has this day been denied.

Dated March 14th, 1892.

M. M. ESTEE,
RAMON E. WILSON,
E. J. McCUTCHEN,
Solicitors for Complainants.

(Endorsed): Service of the within notice admitted by copy this 15th day of March, 1892.

E. P. COLE,
Attorney for Defendants.

Filed March 17, 1892.

L. S. B. SAWYER, *Clerk.*
By W. B. BEAIZLEY, *Deputy Clerk.*

251 In the United States Circuit Court, Ninth Circuit, Northern District of California.

BRUSH ELECTRIC COMPANY,
CALIFORNIA ELECTRIC LIGHT CO.,
SAN JOSE LIGHT AND POWER CO.,
vs.
ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE.

The Brush Electric Company conceiving itself aggrieved by the order entered on the 18th day of January, 1892, refusing to dismiss it from the above suit, hereby appeals from said order to the United States Circuit Court of Appeals for the Ninth Circuit, and it prays that its appeal may be allowed, and that a transcript of the record and proceedings, papers and affidavits upon which said order was made, duly authenticated may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

HENRY P. BOWIE,
EDWARD P. COLE.
Att'ys for the Brush Elec. Co.

And the Brush Electric Company having filed its assignment of errors, it is ordered that the appeal be allowed as prayed.

(Signed) HAWLEY, *Judge.*

(Endorsed): Filed April 18, 1892.

L. S. B. SAWYER, *Clerk.*

252 In the United States Circuit Court of Appeals for the Ninth District.

BRUSH ELECTRIC COMPANY,
CALIFORNIA ELECTRIC LIGHT COMPANY, and
THE SAN JOSE LIGHT AND POWER COMPANY,
Complainants,
vs.
ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE,
Respondent.
In Equity.
No. 11,205.

ASSIGNMENT OF ERRORS.

The petitioner for appeal, the Brush Electric Company, alleges the following errors intended to be argued on its appeal

from the order of this Court denying its motion to be dismissed from the above suit, made and entered on the 28th day of January, 1892, and says that in the record in the above entitled action, motion and order, there is manifest error in this, to wit:

I.

That neither the California Electric Light Company nor the San Jose Light and Power Company has any right to use the name of the Brush Electric Company in this suit, without its consent, and no consent was ever given.

II.

That the Brush Electric Company cannot be made a party plaintiff in the suit against its will.

253

III.

That the Court had no jurisdiction of the Brush Electric Company, to compel it to be a party plaintiff.

IV.

That no process has ever been served on the Brush Electric Company, nor has it ever appeared in the suit.

V.

That no person has ever been authorized to appear for the Brush Electric Company, or to use its name in the suit.

VI.

That the license of the Brush Electric Company does not authorize the California Electric Light Company to use the name of the Brush Electric Company in any suit against any person whatever, nor has the Brush Electric Company ever, at any time, covenanted or agreed to protect the California Electric Light Company, or any of its assignees or licensees, or the San Jose Light and Power Company, from infringements or other torts.

VII.

That it appears by the bill in equity and the affidavits of Roe, the Secretary of the California Electric Light Company, and thus filed on the part of the Brush Company, that the license of the Brush Electric Company to the California Electric Light Company contained no covenant to protect the California Electric Light Company against infringers, nor did it authorize the California Electric Light Company to assign, transfer or grant its license, or any part of it, or any of the rights conferred thereunder, to any person or corporation without the consent of the Brush Electric Company; and that no consent was ever

254 given to said California Electric Light Company to assign said license, or any part thereof, or any rights thereunder,

for the City of San Jose and the Town of Santa Clara, to the San Jose Brush Electric Company, nor to the San Jose Light and Power Company, the co-plaintiff in this action ; and that against the consent of the Brush Electric Company, the said California Electric Light Company transferred all its rights under said license for said City of San Jose and Town of Santa Clara to the said San Jose Brush Electric Company, who, against said consent, transferred the said rights to the San Jose Light and Power Company, who is not in any privity whatever with petitioner.

VIII.

That the California Electric Light Company, without any authority, had, against the consent of the Brush Electric Company, subdivided its rights under said license, and arranged with others, to wit, the San Jose Light and Power Company, to operate under the same, although said license was unassignable without the consent of the licensor.

IX.

That the California Electric Light Company, before the bill of complaint in this suit was filed, had parted with all its rights under its license for said City of San Jose and the Town of Santa Clara, and therefore, had no right to use the name of the Brush Electric Company to bring suit for an infringement in said district in which it had no interest, nor did the San Jose Light and Power Company to whom all the rights of the said California Electric Light Company for San Jose and Santa Clara had been assigned by said latter company, claim or demand the right to use the name of petitioner, nor to maintain said suit in its name,
255 nor did it object to the motion to dismiss, nor does it claim any privity with petitioner, nor rights from it, by or under any license or contract whatever.

X.

That the Court had no jurisdiction over the Brush Electric Company to adjudicate any of its rights or claims in said suit, or to decide that it had given authority to its co-plaintiffs, or either of them, to bring suit in its name or to join it with them as a co-plaintiff.

XI.

That the San Jose Light and Power Company has no right whatever to use the name of the Brush Electric Company in this suit, nor to join it as a co-plaintiff.

XII.

That the Circuit Court of the United States, for the Northern District of California, erred in denying the motion of the Brush

Electric Company to be dismissed from the above entitled action as a co-plaintiff therein.

XIII.

That the Brush Electric Company having specially appeared in said action by counsel for the sole purpose of moving to be dismissed therefrom, and having thereupon, in open Court, and after due notice to all parties, moved to be dismissed from said action, on the ground that it had neither brought said action or joined in bringing the same, but that said action was brought without its knowledge or consent and against its will, and in violation of its right as owner of patent right No. 219,208, mentioned and referred to in the bill of complaint, and in violation of its right to control all litigation touching the same, the
256 said Circuit Court erred in denying the said motion of said Brush Electric Company.

XIV.

That the Brush Electric Company, not having brought said action, and not having appeared therein, and being a non-resident of the State of California, and beyond the jurisdiction of the said Circuit Court, and not having been reached by process in said action, and having moved to be dismissed therefrom, was entitled to be dismissed therefrom, as a co-complainant herein, and the said Circuit Court erred in denying its motion to be dismissed therefrom as a co-complainant.

XV.

That the said Circuit Court errred in denying the said motion of the Brush Electric Company to be dismissed as a co-complainant in said action, and erred in attempting to exercise and in exercising general jurisdiction over said Brush Company, by compelling said Brush Company to remain as a co-complainant in the said action against its will, without its consent, and in violation of its right to be dismissed from said action.

XVI.

That the matters charged in the affidavit filed by the California Electric Light Company, and used on the hearing of the motion of the Brush Electric Company, to be dismissed from said action as a co-complainant therein, as appears therefrom, show that the California Electric Light Company, co-complainant in this action, is simply the exclusive agent of the Brush Electric Company for the sale in California, Nevada, Washington and Oregon, of the patented invention No. 219,208, manufac-
257 tured by the Brush Company, and is not a licensee of the patent, within the meaning of the law governing United States patents, and that the Circuit Court of the United States, for the Northern District of California, on the hearing of said

motion, erred in holding the California Electric light Company to be the licensee of the Brush Company under the patent laws of the United States.

XVII.

That said Circuit Court erred in holding, on said motion, that the San Jose Light and Power Company was a licensee of the Brush Company.

XVIII.

That said Circuit Court erred in holding and deciding upon said motion that the California Electric Light Company was the exclusive licensee of the Brush Company of the patented invention No. 219,208 for the territories of California, Nevada, Oregon and Washington, and further erred in holding and deciding that as such exclusive licensee, the California Electric Light Company had the implied right, by virtue of such license to use the name of the Brush Company in this litigation, and to compel the Brush Company to stand as a co-complainant with said California Electric Light Company in this action, and to prosecute the same for the benefit of said California Electric Light Company.

XIX.

That the said Circuit Court erred in holding that the California Electric Light Company had the right to compel the Brush Electric Company to stand with it as a co-complainant in this action for the reason that it appeared by the affidavits and bill of complaint on file in this action that the California Electric Light Company had parted with all its rights
258 derived from the Brush Electric Company in respect of patented invention No. 219,208 to and in favor of the San Jose Light and Power Company, and that said California Electric Light Company had no interest in said suit.

XX.

That the said Circuit Court erred in denying the motion of the Brush Company to be dismissed as a co-complainant in this action for the reason that it appeared from the affidavits of the Brush Company on file and used upon the hearing of said motion that the Brush Company never knew of, authorized or consented to the assignment of the, or any, rights in or to the, or any, license to use or sell patented invention No. 219,208 to the San Jose Light and Power Company, and that said action was being prosecuted by and in the name of the San Jose Light and Power Company as a co-complainant for its sole use and benefit.

XXI.

That the Brush Electric Company was entitled to be dismissed

upon its motion from the said action as co-complainant therein for the reason that said complaint subjected the rights of the Brush Company without its authority or consent to adjudication in said action, said rights being independent, outside and exclusive of any rights claimed or asserted or existing in said California Electric Light Company as licensee of the Brush Company or of the said San Jose Light and Power Company, and the said Circuit Court erred in denying said motion of the Brush Company.

XXII.

That said Circuit Court erred in denying said motion of the Brush Electric Company to be dismissed for the reason
259 that it appeared from the affidavits on file in said action and used on the hearing of said motion, that said Brush Company never authorized or consented to said action, and that neither the solicitors of the California Electric Light Company in said action, nor the solicitors of the Light and Power Company showed by affidavit, or otherwise, any authority to use the name of the Brush Company therein as co-complainant.

XXIII.

Said Circuit Court erred in denying said motion of the Brush Company to be dismissed, for the reason that the correspondence between the Brush Company and the California Electric Light Company contained and set forth in the affidavits on file and used on the hearing of said motion, showed that the Brush Company never authorized or consented to the name of the Brush Company being used as a co-complainant in said action, and never authorized or consented to any assignment or transfer of the, or any license right under the patented invention No. 219,-208, either directly or otherwise, to the San Jose Light and Power Company.

XXIV.

That the Court erred in denying said motion, for the reason that even if the California Electric Light Company were the licensee of the Brush Electric Company, as claimed and set forth in the bill of complaint in said action, said California Electric Light Company did not have, as such licensee, the, or any right, expressed or implied, absolutely or *prima facie*, or otherwise, to use the name of the Brush Electric Company, the owner of the patent in this litigation, as a co-complainant therein with it, said California Electric Light Company, or with it and the San Jose Light and Power Company, jointly or otherwise, or at all.

260 XXV.

That said Circuit Court erred in denying said motion, for the reason that even if the correspondence or agreements set

forth in the affidavits used on the hearing of the said motion showed an agreement on the part of said Brush Company to join with said California Electric Light Company in maintaining said Patent No. 219,208 against infringers on the Pacific Coast, still the Court had no jurisdiction to compel the Brush Company, against its now present wish and will, to stand as a co-plaintiff in said action, said Court having no jurisdiction over said Brush Electric Company to thus compel a specific performance of its alleged agreement to prosecute infringers, if any such agreement there was.

XXVI.

The Circuit Court erred in denying the Brush Company's motion to be dismissed as a co-complainant in said action, for the reason that it does not appear, nor is it alleged nor claimed by the California Electric Light Company in this action, that the Brush Company was bound to, or ever agreed to, protect said California Electric Light Company against persons claiming under adverse patents, or under the patents mentioned in the bill of complaint in this action.

XXVII.

That said Circuit Court erred in denying said motion of the Brush Electric Company, for the reason that the affidavits on file and used upon the hearing of said motion plainly showed and indicated that the Brush Company retained and had always retained control over the subject-matter of all litigation of which its patent rights are or could be concerned, and that
261 it had never parted with said control to said California Electric Light Company, or to any other company or to any licensee whatsoever, and that a denial of said motion by said Court was a virtual denial of the Brush Company's right to control all litigation concerning its patent rights to said patented invention No. 219,208.

XXVIII.

That said Circuit Court erred in denying said motion of the Brush Company to be dismissed as a co-complainant in said action, for the reason that the solicitors of the California Electric Light Company and the San Jose Light and Power Company, when challenged by said motion to produce their authority for using the name of the Brush Electric Company as a co-complainant in this suit, produced no authority therefor, either in writing or by parol, or otherwise, and such solicitors, and each of them, failed to show by affidavit any right to appear for or on behalf of said Brush Electric Company in this action, and the affidavits of said Brush Electric Company on file and used in said motion show affirmatively that it never authorized said action.

XXIX.

That said Circuit Court erred in denying the said motion of the Brush Electric Company for the reason that the San Jose Light and Power Company are asserting in this action the monopoly to the franchise of the Brush Electric Company's patent No. 219,208, without any right or authority from and against the right and property of the Brush Electric Company, and in violation of the Brush Electric Company's rights, and in usurpation of the rights which, by statute, are made inseparable from the ownership of the legal right to the patent owned and held exclusively by the Brush Electric Company.

262 XXX.

That said Circuit Court erred in denying said motion for the reason that said Brush Electric Company is, by reason of said action of the Court, compelled to stand as a party co-plaintiff therein against its will, in violation of its rights to remain out of said action, in which action its own interests and rights are necessarily involved and imperiled, the California Electric Light Company and the San Jose Light and Power Company claiming it to be for their, and each of their, interests that the Brush Company shall thus be used as a co-complainant in said action and said Court erroneously so holding.

XXXI.

That the said Circuit Court erred in denying said motion of the Brush Company to be dismissed as a co-complainant for the reason that by such denial said Brush Company is compelled to remain as a co-complainant in said action, and said Circuit Court is asserting and exercising jurisdiction over said Brush Electric Company as a party complainant in said action against its consent and authority and without said Brush Company's having voluntarily appeared in said action, or having been reached by compulsory process therein and that said Brush Company is thus being deprived of its day in Court and of its constitutional and statutory rights.

XXXII.

That said Court erred in denying said motion of the Brush Company to be dismissed from said action, for the reason that the Brush Electric Company is thereby, without its consent, forced and compelled, as nominal co-plaintiff in said ac-
263 tion to make, and is committed to, statements made in said bill of complaint which are false and untrue and without any foundation whatever in fact, and to the detriment of said Brush Electric Company and to its predjudice as the owner of said patented invention No. 219,208, and said Brush Electric Company is powerless to contradict and contravail the

same, and said Brush Electric Company is thus without due process of law, and without its authority and in violation of its rights being deprived of its property and rights of property.

XXXIII.

That the Court erred in relying upon and deciding said motion adversely to the Brush Company on the authority of the case of Brush-Swan Company *et al. vs.* Thompson-Houston Company, and in holding the facts in that case to be almost or at all identical with the facts alleged in the Bill of Complaint and affidavits on file in this action, for the reason that said facts are neither almost nor at all similar to or identical with the facts in the present case, but are different, other and distinct therefrom, and because the decision of the Circuit Judge in said case is erroneous and against law.

XXXIV.

That the said Circuit Court erred in deciding upon said motion that the California Electric Light Company was the licensee of the Brush Electric Company, or that the San Jose Light and Power Company was the licensee of said company, or that either of said companies, or both of them, had the right to use the name of the Brush Company in this litigation, or could compel the Brush Company to permit its name to be used as a co-complainant herein.

264 Respectfully submitted,

EDWARD P. COLE,
H. P. BOWIE,
Solicitors for Brush Electric Co.

(Endorsed): Filed April 18, 1892.
L. S. B. SAWYER, *Clerk.*

265 At as tated term, to wit: the February term, A. D. 1892, of the Circuit Court of the United States of America of the Ninth Judicial Circuit, in and for the Northern District of California, held at the Court room in the City and County of San Francisco, on Monday, the 18th day of April, in the year of our Lord one thousand eight hundred and ninety-two.

Present: The Honorable THOMAS P. HAWLEY, United States District Judge, District of Nevada.

BRUSH ELECTRIC COMPANY ET AL.
vs.
ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE. } No. 11,205.

On motion of E. P. Cole, Esq., counsel for the complainant, the Brush Electric Company, it is ordered that an appeal to the

United States Circuit Court of Appeals, for the Ninth Circuit, from the order made and entered on the 18th day of January, 1892 denying the motion for an order dismissing the above entitled suit as to said complainant, the Brush Electric Company, be and the same hereby is allowed, and that a certified transcript of the record and all proceedings herein, be forthwith transmitted to said United States Circuit Court of Appeals. It is further ordered that the amount of the bond on appeal herein be fixed at the sum of one thousand dollars.

266 In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

BRUSH ELECTRIC COMPANY,
CALIFORNIA ELECTRIC LIGHT CO.,
SAN JOSE LIGHT AND POWER CO.,

vs.

THE ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE.

Know all men by these presents, That we, George E. Bates and J. R. Howell, of the City and County of San Francisco, are held and firmly bound unto California Electric Light Company, San Jose Light and Power Company and the Electric Improvement Company of San Jose, jointly and severally, to each and all of them, in the full and just sum of one thousand dollars, to be paid to the said California Electric Light Company, San Jose Light and Power Company and The Electric Improvement Company of San Jose, jointly and severally, and to their certain executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 21st day of April, in the year of our Lord one thousand, eight hundred and Ninety-two.

Whereas, lately, at a Circuit Court of the United States for the Northern District of California, in a suit depending in said Court between Brush Electric Company, California Electric Light Company and San Jose Light and Power Company against
267 The Electric Improvement Company of San Jose, and to wit, January 18th, 1892, an order denying a motion to dismiss the Brush Electric Company from the said suit was rendered and entered against the said Brush Electric Company; and the said Brush Electric Company having obtained from said Court an order allowing an appeal to reverse the said order in the aforesaid suit, and a citation directed to the said California Electric Light Company, San Jose Light and Power Company and

the Electric Improvement Company of San Jose, citing and admonishing them to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California, on the 21st of May next.

Now, the condition of the above obligation is such that if the said Brush Electric Company shall prosecute its appeal to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void ; else to remain in full force and virtue.

GEORGE E. BATES. [SEAL.]
J. R. HOWELL. [SEAL.]

Acknowledged before me the day and year first above written.

L. S. B. SAWYER,
Commissioner U. S. Circuit Court, Northern District of California.

United States of America, Northern District of California.

George E. Bates and J. R. Howell, being duly sworn, each for himself, deposes and says that he is a freeholder in said district,
and is worth the sum of one thousand dollars, exclusive
268 of property exempt from execution, and over and above all debts and liabilities.

GEORGE E. BATES,
J. R. HOWELL.

Subscribed and sworn to before me this 21st day of April, 1892.

L. S. B. SAWYER,
Commissioner U. S. Circuit Court, Northern District of California.

Form of bond and sufficiency of securities approved.

(Signed) HAWLEY, *Judge.*

(Endorsed) : Filed this 21st day of April, A. D. 1892.

L. S. B. SAWYER, *Clerk.*

269 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

THE BRUSH ELECTRIC COMPANY ET AL.
vs.
THE ELECTRIC IMPROVEMENT COMPANY OF SAN JOSE. } No. 11,205.

I, L. S. B. Sawyer, Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the

Northern District of California, do hereby certify the foregoing two hundred and sixty-eight written and printed pages, numbered from 1 to 268, inclusive, to be a full, true and correct copy of the record and all proceedings in the above and therein entitled suit, and that the same together constitute the Transcript of the Record upon the appeal of the Brush Electric Company to the United States Circuit Court of Appeals for the Ninth Circuit, from the order of the Circuit Court of the United States for the Northern District of California, denying the motion of the said Brush Electric Company to be dismissed from the above entitled suit.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, this 20th day of May, A. D. 1892.

[SEAL.] L. S. B. SAWYER,
Clerk U. S. Circuit Court, Northern District of California.

270 UNITED STATES OF AMERICA, ss.

The President of the United States to California Electric Light Company, San Jose Light and Power Company and the Electric Improvement Company of San Jose, greeting :

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, on the 21st day of May next, pursuant to an order allowing appeal entered in the Clerk's Office of the Circuit Court of the United States, for the Northern District of California, from an order made and entered on the 18th day of January, 1892, in the suit of Brush Electric Company, California Electric Light Company and San Jose Light and Power Company against the Electric Improvement Company of San Jose, wherein Brush Electric Company is complainant and appellant in error, and you are respondents and appellees, to show cause, if any there be, why the order rendered against the said Brush Electric Company as in the said order allowing appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable THOS. P. HAWLEY, Judge of the United States Circuit Court for the Northern District of California, this 22d day of April, A. D. 1892.

THOMAS P. HAWLEY, *U. S. Judge.*

271 (Endorsed): Due service admitted of within citation this 22d day of April, 1892.

WM. F. HERRIN.

Solicitor for the Electric Improvement Co. of San Jose.

M. M. ESTEE,

J. H. MILLER,

Solicitors for Cal. Elec. Light Co., & San Jose Light & Power Co., Appellees.

Filed April 23, 1892.

L. S. B. SAWYER,

Clerk U. S. Circuit Court, Northern District of California.

(Endorsed): No. 54. United States Circuit Court of Appeals, for the Ninth Circuit. Transcript of Record on Appeal. Filed May 20, 1892.

F. D. MONCKTON, *Clerk.*